

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4

5 -----) MDL No. 2804

6 IN RE: NATIONAL)

7 PRESCRIPTION OPIATE)

8 LITIGATION)

9 -----) Case No. 17-MD-2804

10 THIS DOCUMENT RELATES TO:)

11 ALL CASES)

12 -----) Hon. Dan A. Polster

13

14 HIGHLY CONFIDENTIAL

15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

16 The videotaped deposition of KEVIN M. MURPHY,
17 Ph.D., called by the Plaintiffs for examination, taken
18 pursuant to the Federal Rules of Civil Procedure of
19 the United States District Courts pertaining to the
20 taking of depositions, taken before JULIANA F.
21 ZAJICEK, a Registered Professional Reporter and a
22 Certified Shorthand Reporter, at the offices of
23 Alvarez & Marsal, Suite 1800, 540 West Madison Street,
24 Chicago, Illinois, on June 6, 2019, at 10:08 a.m.

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1 I N D E X

2

3 WITNESS: PAGE:

4 KEVIN M. MURPHY, Ph.D.

5 EXAM BY MR. KO..... 11

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9 E X H I B I T S

10 MURPHY EXHIBIT MARKED FOR ID

11 No. 1 Plaintiffs' Notice of Oral 9

12 Videotaped Expert Deposition of

13 Kevin Murphy

14 No. 2 Expert Report of Kevin M. Murphy, 9

15 Ph.D., May 10, 2019

16 No. 3 Article titled: "A Look at the 28

17 Underlying Causes of the Opioid

18 Crisis," May 13, 2019, Council of

19 Economic Advisers

20 No. 4 Document titled: "Opioid Crisis 30

21 Update," Thomas Gilson, M.D.,

22 Cuyahoga County Medical Examiner

23 and Regional Forensic Sciences

24 Laboratory Director

1	E X H I B I T S (Continued)		
2	MURPHY EXHIBIT	MARKED FOR ID	
3	No. 5	Curriculum Vitae - Kevin M.	34
4		Murphy, May 2019	
5	No. 6	Dr. Kevin M. Murphy - Hours and	115
6		Compensation through May 31, 2019	
7	No. 7	Appendix B: List of Materials	194
8		Relied Upon	
9			
10			
11			
12		PAGES	
13	CONFERENCE CALL WITH SPECIAL MASTER COHEN - 149 - 159		
14			
15			
16			
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1 (WHEREUPON, certain documents were
2 marked Murphy Deposition Exhibit
3 Nos. 1 and 2, for identification, as
4 of 06/06/2019.)

5 THE VIDEOGRAPHER: We are now on the record. My
6 name is Anthony Micheletto. I am a videographer for
7 Golkow Litigation Services.

8 Today's date is June 6th, 2019, the time
9 is 10:08 a.m., as indicated on the video screen.

10 This video deposition is being held in
11 Chicago, Illinois, in the matter of In Re National
12 Prescription Opiate Litigation, in the United States
13 District Court for the Northern District of Ohio,
14 Eastern Division.

15 Our witness is Kevin Murphy.

16 Will counsel please identify yourselves
17 for the video record.

18 MR. HALLER: David Haller of Covington & Burling
19 for McKesson and for the witness.

20 MR. PULSIPHER: Bryant Pulsipher, Covington &
21 Burling, for the same.

22 MS. KABIA: Fatmata Kabia from Covington &
23 Burling for the same.

24 MR. MURPHY: Matthew Murphy from O'Melveny &

1 Myers for Johnson & Johnson and Janssen.

2 MS. CASTLES: Claire Castles with Jones Day on
3 behalf of Walmart.

4 MS. COONEY: Alison Cooney from Dechert on
5 behalf of Purdue.

6 MS. BAISCH: Krista Baisch, Crueger Dickinson,
7 here for the Plaintiffs.

8 MR. KO: Good morning everyone. David Ko from
9 Keller Rohrbach, also on behalf of the Plaintiffs.

10 THE VIDEOGRAPHER: Do we have counsel on the
11 phone?

12 MR. KNAPP: Yes. This is Tim Knapp with
13 Kirkland & Ellis on behalf of Allergan PLC.

14 MR. BENSINGER: Peter Bensinger, Junior, of
15 Bartlit Beck for Walgreens.

16 MS. DeFRANCESCO: Lindsay DeFrancesco from Reed
17 Smith on behalf of AmerisourceBergen Drug Corporation.

18 MR. HERMAN: Steven Herman from Zuckerman
19 Spaeder on behalf of CVS Rx Services, Incorporated and
20 CVS Indiana, LLC.

21 MR. KOLB: Dan Kolb of Ropes & Gray on behalf of
22 Mallinckrodt LLC and SpecGX LLC.

23 MR. LAVELLE: John Lavelle, Morgan Lewis, on
24 behalf of Rite Aid of Maryland.

1 MR. HALPERN: Richard -- Richard Halpern of
2 Marcus & Shapira on behalf of HBC Service Company.

3 MR. MURPHY: William Erb --

4 MR. HAHN: Bill Hahn -- oh.

5 Bill Hahn with Barnes & Thornburg on
6 behalf of H.D. Smith.

7 MR. ERB: William Erb, Cavitch, Familo & Durkin,
8 on behalf of Discount Drug Mart.

9 THE VIDEOGRAPHER: Our court reporter today is
10 Juliana Zajicek. Please swear in the witness.

11 (WHEREUPON, the witness was duly
12 sworn.)

13 KEVIN M. MURPHY, Ph.D.,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. KO:

18 Q. Good morning.

19 A. Good morning.

20 MR. HALLER: Mr. Ko, can I interrupt for just
21 one second. I'm -- I apologize. I -- I --

22 MR. KO: All right.

23 MR. HALLER: I did mention -- yes, I know. I'm
24 sorry. I -- before we went on the record I mentioned

1 that there were some adjustments that Professor Murphy
2 wanted to talk through in his report, but I neglected
3 to mention that there were also two documents that
4 he -- that were issued after the date of his report
5 and before today's date and I have copies of those.

6 So, again, I just didn't want to later
7 interrupt or let you -- you know, I could give those
8 to you whenever you would like a copy of those.

9 MR. KO: I would like a copy of those right
10 now --

11 MR. HALLER: Okay.

12 MR. KO: -- but when you say issued after the
13 report and before today, just so the record is clear,
14 as far as I know, this is the first time I've heard of
15 it, so are you saying that you are just disclosing it
16 right now for the first time? Because I --

17 MR. HALLER: Right.

18 MR. KO: -- I don't believe I've seen -- okay.

19 MR. HALLER: Right. There was a request in the
20 deposition notice that the witness bring to the
21 deposition any documents that he has relied on since
22 the time of his report and today. So there is two
23 documents responsive to that request in the deposition
24 notice.

1 MR. KO: Okay. Great.

2 MR. HALLER: Okay.

3 MR. KO: Thanks for the clarification.

4 MR. HALLER: Sure.

5 MR. KO: So I'll grab those right now.

6 MR. HALLER: Oh, and we also have an updated CV

7 that has, like -- which was also requested.

8 MR. KO: Perfect.

9 MR. HALLER: Do you want a copy as well?

10 MS. BAISCH: Yes, please.

11 MR. HALLER: Okay. And do you have the CV?

12 Okay. This is the updated CV.

13 MR. KO: Thank you for that, Mr. Haller.

14 BY MR. KO:

15 Q. Okay. Now with those -- housekeeping out
16 of the way, we met earlier this morning, but just to
17 reintroduce myself, my name is David Ko and I'll be
18 asking questions about your report and your engagement
19 in this matter.

20 Do you prefer to go by Doctor or
21 Professor, Mr. Murphy, any preference?

22 A. Anything is fine.

23 Q. Okay. Do you mind if I call you Doctor?

24 A. Sure.

1 Q. We'll start with that.

2 Dr. Murphy, I believe I saw in your report
3 that you disclosed that you currently live in
4 New Lenox, Illinois.

5 Is that your current permanent address?

6 A. Yes, it is.

7 Q. And do you have any other permanent
8 addresses?

9 A. No, that's my only permanent address.

10 Q. Okay.

11 Dr. Murphy, I know you've been deposed
12 many times before, but I think it is always a good
13 idea to go over some of the ground rules. And so let
14 me remind you of a few that are important to me.

15 It is very important that we create a
16 clean record and Juliana is able to transcribe
17 everything we say. So please wait until I finish my
18 question before you move on to your answer and I'll
19 also try and wait until you finish your response
20 before I move on to my next question.

21 Okay?

22 A. I will do my best and sometimes I pause,
23 so you might keep that in mind so you -- I sometimes
24 pause and then start up again, so.

1 Q. Got it.

2 A. And I -- you might do the same, so.

3 Q. Sounds good.

4 And to the extent I ask yes-or-no
5 questions throughout this day and your answer is, in
6 fact, yes or no, please do indicate as such rather
7 than simply shaking your head or nodding your head.

8 Does that sound good?

9 A. Yes, it does.

10 Q. And from time to time throughout this day,
11 Mr. Haller or other counsel here at this table may
12 object to my questioning, but unless they clearly
13 instruct you otherwise, I'd ask that you answer my
14 question nonetheless.

15 Okay?

16 A. Yes.

17 Q. Okay. And throughout this day if at any
18 time you need a break, please feel free to ask and
19 I'll do my best to accommodate.

20 A. I will.

21 Q. Dr. Murphy, is there anything that you can
22 think of today that will prevent you from testifying
23 honestly or truthfully?

24 A. No.

1 Q. Great.

2 Dr. Murphy, did you prepare for this
3 deposition?

4 A. Yes, I did.

5 Q. And can you describe to me what you did to
6 prepare?

7 A. I would say I prepared by first reviewing
8 my report and some of the backup material for what
9 results I presented in my report. I reviewed portions
10 of the reports of Mr. -- Dr. Gruber and Dr. Cutler. I
11 discussed the case with my staff who worked with me
12 preparing the report, as well as yesterday I met with
13 counsel who are here today to prepare for today's
14 deposition.

15 Q. And when you say that you met with
16 counsel, who did you meet with in particular?

17 A. I met with the two gentlemen to my left
18 here, David --

19 MR. HALLER: Mr. Haller and Mr. Pulsipher.

20 BY MR. KO:

21 Q. Great.

22 And is that the only time you've met with
23 counsel in connection with preparing for this
24 deposition?

1 A. I believe that's the only time I've met
2 with him since my report was filed. I mean, I've met
3 with counsel at other times prior to filing the
4 report, but this has been the deposition prep --

5 Q. So that --

6 A. -- was yesterday.

7 Q. I just violated my own rule and
8 interrupt -- interrupted you.

9 But after May 10th when you disclosed your
10 report, the only time you met with counsel in
11 preparation for your deposition today was -- was
12 yesterday?

13 A. I believe -- that is my recollection that
14 the only deposition preparation with counsel present
15 was yesterday.

16 Q. And approximately how long did you meet
17 with counsel?

18 A. About three-and-a-half hours, I believe.

19 Q. And you also say you discussed, in
20 connection with preparing for this deposition, you
21 also said that you discussed the case with your staff.

22 Who is your staff?

23 A. Well, the three primary people that I've
24 discussed it with and who worked with me on the report

1 were Sean Taylor, that's S-e-a-n for Sean, Taylor is
2 spelled like normal. Jarrod Welch and -- and Daniel
3 Garcia Schwartz.

4 MR. HALLER: And Jarrod I think is J-a-r-r-o-d.

5 BY MR. KO:

6 Q. And are Mr. Taylor and Mr. Welch and
7 Mr. Garcia Schwartz are all employees of Charles River
8 Associates?

9 A. I believe they are all employees of
10 Charles River Associates, yes.

11 Q. Okay. Did you meet with them, I assume,
12 outside the presence of counsel?

13 A. I did. I saw them briefly this morning
14 outside the presence of counsel for, like, four
15 minutes.

16 Q. Okay. In addition to seeing them briefly
17 this morning, I imagine that you've -- as you said,
18 you've discussed this case with them.

19 Did you prepare for this deposition with
20 them as well?

21 A. I would say in preparation for my
22 deposition I discussed it with them. I -- they
23 weren't preparing for the deposition. I was. But I
24 discussed my report and various aspects of the case

1 with my staff as is -- as would be my standard
2 practice.

3 Q. And when did you meet with them and for
4 approximately how long prior to this morning's brief
5 interaction?

6 A. I would say it was -- as far as I recall,
7 it was all telephonically, that is, over the phone. I
8 think the in-person meetings, other than the brief
9 interaction this morning, was the same one that I had
10 with counsel, I would say I probably had five or six
11 phone calls over the last roughly a week preparing for
12 this.

13 Q. And approximately how long did those phone
14 calls last?

15 A. I think it varied depending on the phone
16 call, total, upper single digit hours, five, seven
17 hours, kind of in that range total.

18 Q. Total of all -- so just so the record is
19 clear, the five to six phone calls cumulative --
20 cumulative -- cumulatively added up to about five to
21 seven hours of total time?

22 A. According to my best recollection. I
23 mean, obviously those are not the kind of things that
24 one accurately recalls very well, but along -- on that

1 order of magnitude I think is a fair statement of what
2 the time spent was.

3 Q. Fair enough.

4 And you -- you said that a moment ago that
5 you discussed this case and various aspects -- well, I
6 think you said you discussed the report and various
7 aspects of this case.

8 Can you describe to me what you
9 specifically discussed with them?

10 A. I think generally we went over the
11 exhibits, just to review the exhibits, since it had
12 been a while since the report had been filed, and I'm
13 teaching two classes this quarter, so my mind has been
14 on other things for the last few weeks, so I wanted to
15 go back over the exhibits so I could recall what some
16 of the more specifics. Hopefully I'll remember them
17 today. I'm not that great at always remembering
18 specifics, but we went over -- back over the -- the
19 exhibits as well as the text of the report and just
20 discussed through things. I don't -- I don't think it
21 was any specific objective of material we wanted to
22 cover.

23 Q. And when you say "exhibits," you are
24 talking about the exhibits in your report, correct?

1 A. Exhibits in my report, I think we also
2 discussed some of the exhibits in the Plaintiff
3 experts reports just so I could refresh myself of what
4 they had done as well.

5 Q. Okay. Do you recall which specific
6 exhibits in the Plaintiffs' expert reports that you
7 discussed with them?

8 A. I would say it would be the same exhibits
9 that are discussed directly in my report. So if -- if
10 you looked at my report, I would say pretty much went
11 over the Plaintiffs' exhibits that are directly
12 discussed in my report. That would probably be the
13 easiest way to find them. Probably Professor Cutler's
14 regression and various tables where he calculates his
15 Method 1 and Method 2 calculations, as well as a few
16 of the underlying regressions for that.

17 Q. Okay. And as you are most likely aware,
18 Professor Cutler has multiple regressions in his
19 report. So can you give me an idea of which specific
20 regressions you reviewed?

21 A. Well, I -- I think I've reviewed them all
22 over the course of time. The one we went -- I went
23 back and looked at would be his regression for the
24 pre-2010 period that he relies on for his -- I -- I

1 think -- think of it as primary Method 1 calculations
2 for that early part, the corresponding regression that
3 he uses for his post-2010 period, he has a
4 cross-sectional regression that he uses for that, as
5 well as the cross-sectional regression he uses for the
6 whole time period under his Method 2 approach. Those
7 are the specific regression results I recall looking
8 back at.

9 Q. Okay. And just -- just so the record is
10 clear, I know in his report he describes these methods
11 as approaches. So I believe when you are talking
12 about the various method, Method 1 and Method 2, are
13 you talking about the approaches that he sets forth in
14 his report or --

15 A. I don't remember his terminology, but I
16 know he has a 1 and a 2. I'll leave off the word that
17 comes before it. And 1 is -- 1 is kind of a
18 bifurcated approach where he uses one regression for
19 the pre-2010 period and then a separate regression to
20 understand the post-2010 period, and then there is
21 another one where he essentially uses something
22 similar to that second stage for the entire period. I
23 think that's his Approach 2.

24 Q. Great. So in addition to these

1 regressions anal- -- analyses that you reviewed in
2 Professor Cutler's report, do you recall any other
3 exhibits from Plaintiffs' expert reports that you
4 reviewed in connection with preparing for this
5 deposition?

6 A. I -- I think I probably at least looked at
7 most of them, because I went -- I kind of went through
8 the Gruber report and the -- and the Cutler report,
9 but that probably would have been more from Cutler,
10 the tables he as where he has the calculations that
11 kind of underlies his final results.

12 From Professor Gruber's analysis, I guess
13 the ones I recall are some of the charts he has where
14 he has plots over time of various, I think, mortality
15 outcomes were the primary ones.

16 Q. And when you said a moment ago that you
17 probably looked at least -- at least most of them, you
18 are talking about the exhibits in Professor Gruber and
19 Professor Cutler's reports, correct?

20 A. Yeah, because I went back through the
21 reports but not, like, reading every single word as I
22 went through. So I was reading portions of it and at
23 the same time looking pretty much at the charts as I
24 went through because charts are a very easy way to see

1 what he is talking about in that part of the report,
2 so. That's the sense to which I would have probably
3 looked at virtually all of the charts.

4 Q. Great. And in connection with preparing
5 for this deposition, did you also speak with anyone
6 outside of your two counsel present here or
7 individuals at Charles River Associates who I'll from
8 this point forward called CRA in a shorthand?

9 A. Not that I recall.

10 Q. Okay.

11 A. I mean, about this case. Obviously I
12 spoke to other people. Your question was did I speak
13 to other people. The answer is yes, but not about
14 this case.

15 Q. Right. And just so that I can understand
16 clearly, in your report you make references to Greg
17 Bell.

18 Do you recall that?

19 A. Yes, I do.

20 Q. And who is Greg Bell?

21 A. He is at Charles River Associates and
22 he's, I believe, head of the Life Science Division at
23 Charles River Associates, but I don't know him
24 personally very well.

1 Q. Okay. And you know -- are you aware that
2 he submitted an expert report on behalf of the
3 Defendants in this case?

4 A. Yes, I am.

5 Q. Okay. And did you speak with him at all,
6 notwithstanding the fact that you don't know him very
7 well, but did you speak with him at all about this
8 case, either in connection with this deposition or
9 prior to that?

10 A. I have spoken with him at various points
11 since the onset of the case, not for any extensive
12 conversation and -- and usually as part of a lot of
13 people being on the phone, for example, at the same
14 time. I don't -- I haven't had any one-on-one
15 conversations with him, for example. So he has been a
16 participant in some of the conversations that I have
17 also been involved in.

18 Q. Okay.

19 A. And I believe counsel were on the phone
20 in -- whenever I've talked to him.

21 Q. Were there any conversations that you had
22 with him where counsel were not present?

23 A. No.

24 Q. And when you said a moment ago that you

1 recall speaking or interacting with him since the
2 onset of the case, what is your understanding of when
3 the onset -- onset of this case started?

4 A. I don't have a date. It would have been
5 sometime earlier this year in the -- for me, that's
6 when I became involved. I became involved earlier
7 this year.

8 Q. Okay. Great.

9 I'm going to hand you a copy of what has
10 been marked as Murphy Exhibit 1.

11 MR. KO: And, David, there is a copy right here
12 between you and Bryant.

13 MR. HALLER: Okay. Thank you. Thanks.

14 BY MR. KO:

15 Q. Dr. Murphy, have you seen this notice
16 before?

17 A. I don't recall seeing this specific
18 notice. I was made aware of the contents of it.

19 Q. Okay. That's great.

20 And so with respect to the contents, what
21 were you made aware of?

22 A. That there was going to be a deposition
23 today that was going to cover my opinions in the case.
24 My understanding, it was similar to other depositions

1 that I've taken, so I didn't really gather any details
2 that were substantially different than a --
3 depositions that I've had in the past.

4 Q. Sure. And notwithstanding the fact that
5 you haven't seen this specific notice or recall
6 specifically seeing it, I want to direct your
7 attention to the first exhibit that's attached to
8 this, Murphy Exhibit 1.

9 And with respect to the first item, I
10 believe there is reference there made to certain
11 documents that you reviewed in connection with this
12 deposition. And earlier today Mr. Haller did indicate
13 and provide to us certain documents that you did
14 review, and we'll get to those in a moment.

15 But can you briefly describe to me what
16 specific documents you reviewed in connection with
17 this dep -- deposition, outside of the ones we've
18 already discussed?

19 A. Other than -- I believe other than ones
20 that are already disclosed in my report, and that
21 would be items that were cited in my report. I think
22 the two that we're turning over today are the only
23 ones that I'm aware of.

24 Q. Okay. So in your report you -- in your

1 Appendix B you set forth certain materials that you
2 relied upon for purposes of your report. And your
3 testimony is that in addition to those documents and
4 the two documents that your counsel turned over today,
5 there is no other documents that you reviewed in
6 connection with this -- in connection with preparing
7 for this deposition, correct?

8 A. Not that I recall.

9 Q. Okay. Great.

10 And let's turn to the exhibits that
11 Mr. Haller --

12 A. Okay.

13 Q. -- provided to me earlier this morning.

14 MR. KO: Can we mark for the record -- do you
15 have an extra copy for the witness?

16 MR. HALLER: Yes. Should we mark this one, is
17 this -- is that the one you want to start with?

18 MR. KO: Let's do the other, let's start with
19 this one.

20 MR. HALLER: Okay. She'll mark it.

21 (WHEREUPON, a certain document was
22 marked Murphy Deposition Exhibit
23 No. 3, for identification, as of
24 06/06/2019.)

1 BY MR. KO:

2 Q. So the court reporter has handed you a
3 copy of what has been marked as Murphy Exhibit 2 --

4 THE COURT REPORTER: Three.

5 MR. KO: Three. Thank you.

6 BY MR. KO:

7 Q. And so this is one of the documents in
8 addition to those that you disclose in Appendix B that
9 you reviewed and you've obviously dis -- provided at
10 this deposition, correct?

11 A. Yes.

12 Q. And what is this document?

13 A. It's actually a document that was produced
14 by the White House, I believe, Council of Economic
15 Advisers, that was essentially an update on some of
16 the data regarding opioid overdose deaths over time.
17 And it has some more recent data than the data that
18 were available at the time I prepared my report, as
19 well as some discussion from the Council of Economic
20 Advisers is what I infer from this in terms of some
21 recent work that they've been doing on what's going --
22 what's been going on in the -- with opioids.

23 Q. Okay. And how did you discover this
24 document?

1 A. It was brought to my attention that
2 this -- that -- I knew that the council was working on
3 this issue and that they had announced these things
4 and then it was brought to my attention that there
5 actually had been a release of some of that
6 information.

7 Q. And did counsel, your attorneys this time,
8 not the council, c-o-u-n-c-i-l, did your counsel bring
9 this document to your attention?

10 A. Yes, they did.

11 Q. Okay. And with res -- I'll now turn to
12 Murphy Exhibit -- what will be marked as Exhibit 4?

13 MR. HALLER: She'll mark that.

14 (WHEREUPON, a certain document was
15 marked Murphy Deposition Exhibit
16 No. 4, for identification, as of
17 06/06/2019.)

18 BY THE WITNESS:

19 A. Yes.

20 BY MR. KO:

21 Q. And so Murphy Exhibit 4 is the second
22 document that you looked at in addition to the
23 materials cited in Appendix B of your report --

24 A. Yes.

1 Q. -- in connection with preparing for this
2 deposition, correct?

3 A. That is.

4 Q. Okay. And what is this document?

5 A. It is an update from, and it says right on
6 the front, the Cuyahoga County Medical Examiner and
7 the Regional Forensic Sciences Laboratory Director.
8 And, again, it has some updates to some of the data
9 that had been available before. And so I thought this
10 would be potentially something that would be useful
11 if -- beyond what I had available at my report. I --
12 it's not something on which I formed additional
13 opinions in anything at this point, but I wanted to
14 bring to the attention of all of the parties that this
15 was information that was now available that
16 potentially would be helpful.

17 Q. And what is your understanding of when
18 this particular document was published or disclosed to
19 the public?

20 A. I -- I -- that I don't recall. It -- I
21 was not aware of it until after my report. And,
22 therefore, I -- given that I thought it might
23 potentially be something useful, it would be worth
24 bringing forward.

1 Q. And did counsel, your attorneys, also
2 provide this document to you?

3 A. Yes, they did.

4 Q. Okay. And this document, as we, I believe
5 we noted before, I don't think actually we did, it's
6 authored -- it appears to be authored by Thomas
7 Gilson.

8 Did you see that?

9 A. Yes.

10 Q. Do you know who Thomas Gilson is?

11 A. I do not know him personally. I -- I -- I
12 mean, I think on here it says what it -- what he is
13 affiliated with, but I -- I know that from this
14 document. I don't -- I'm not very good with names, so
15 I don't recall his name.

16 Q. Do you know he has been deposed before in
17 this case, right?

18 A. It -- I think that sounds right, but,
19 again, I never remember people by their name.

20 Q. Sure.

21 A. It doesn't mean much to me.

22 Q. And I believe you reviewed his deposition
23 transcript?

24 A. Probably, but, again, I generally remember

1 things more for the content than I do for the name of
2 the person who is being deposed.

3 Q. And a moment ago you said that you are not
4 necessarily -- well, you are not using this document
5 to form or support any of the opinions in this case.

6 I want to make sure I understand with
7 respect to Murphy Exhibit 3 that we just discussed a
8 moment ago, are you using that document in any way to
9 help inform or provide the bases for any of the
10 opinions that you are providing in this case?

11 A. Not as of yet because I haven't had a
12 chance to fully study these documents and see how they
13 fit in with everything else I know. But they are
14 potentially useful given they have more updated
15 information, so I thought it would be good to bring
16 those to your attention.

17 Q. Okay. I appreciate that. You can set
18 those aside for now.

19 Going back -- well, you can set aside
20 Exhibits 3 and 4, but let me redirect your attention
21 to Murphy Exhibit 2, which is the notice of your
22 deposition.

23 A. I believe it is actually Exhibit 1.

24 Q. Thank you. I'm getting -- you get -- you

1 don't recall names, I don't recall numbers.

2 With the Exhibit 1 -- thank you for
3 that -- with respect to Murphy Exhibit 1, going back
4 to the page that had the three bullets on it, the
5 exhibit. Turn your attention to the third item that
6 requests your CV.

7 Do you see that?

8 A. Yes.

9 Q. And it is my understanding, as Mr. Haller
10 indicated earlier, that you have an updated CV to
11 provide?

12 A. That's correct.

13 Q. Okay. Let's go ahead and mark that.

14 MR. HALLER: Did we give all of our copies?

15 MR. KO: Do you have an extra copy?

16 MR. HALLER: Do we have more of those? Did I
17 hand them all out or --

18 MR. KO: We can use this one.

19 (WHEREUPON, a certain document was
20 marked Murphy Deposition Exhibit
21 No. 5, for identification, as of
22 06/06/2019.)

23 MR. HALLER: Did you want yours back? Okay.

24 BY MR. KO:

1 Q. Juliana has handed you a copy of what has
2 been marked as Murphy Exhibit 5. And so this reflects
3 an updated CV that you are providing in this case,
4 correct?

5 A. Yes.

6 Q. Can you describe to me what has been
7 updated relative to the version that you disclosed in
8 your report?

9 A. It would be any of the items that would
10 be, I think -- believe on Page 19 would be the --
11 would be the -- would be the items that would be
12 updated. And I don't remember which of these would be
13 after that date, but there were certain things that
14 showed up after that date, so we added them to the end
15 of the vitae and then the rest of the vitae should be
16 exactly the same with some additional items added at
17 the end.

18 Q. Okay. So the items that are set forth in
19 the Page 19, and I also believe Page 20, which
20 reflect, I believe, additional expert work that you've
21 done are the items that you have added that are
22 different than the CV that has been disclosed in your
23 report that was submitted on May 10th, correct?

24 A. That's my understanding, yes.

1 Q. Okay. And it looks like there have
2 been -- at least in terms of dates, the report you
3 have a submitted in this case was disclosed on
4 May 10th, correct?

5 A. Yes.

6 Q. So it looks like there are at least four
7 engagements that you -- or four expert reports that
8 you also provided on May 10th in -- in other matters?

9 A. Well, they are all -- they are actually
10 all for the -- they are all from the same matter.
11 There is multiple -- it is -- it is a case that
12 involves multiple plaintiffs and it's a case where
13 there are multiple reports that are basically all
14 covering the same material, so. Those -- if you
15 notice, the -- the case being described there is the
16 same case for all four of them.

17 Q. Understood.

18 So you've discussed an -- and I see you
19 actually disclosed the expert report that you provided
20 in this matter, so in addition to that one, it looks
21 like you've provided in your CV the expert report
22 you've submitted in the In Re Package Seafood Products
23 case, correct?

24 A. That's correct.

1 Q. Okay. Let's actually stay on your CV for
2 a moment.

3 And in the beginning of your CV on Page 1,
4 you list your current positions, correct?

5 A. Yes.

6 Q. And you've listed the fact that you are a
7 professor here at the University of Chicago, that you
8 are a facul- -- faculty research associate at the NBER
9 and also co-director at the Becker Friedman Institute,
10 correct?

11 A. That's correct.

12 Q. With respect to your work at the NBER, for
13 the record, National Bureau of Economic Research, how
14 long have you been a faculty research associate?

15 A. A long time. 20 plus years.

16 Q. And prior to being a faculty research
17 associate, did you serve in any other capacity at the
18 NBER?

19 A. I think I was a faculty research fellow.
20 I think that's what you're called before you become a
21 faculty research associate.

22 Q. Okay. Is there any difference between a
23 faculty research associate and a -- and a research
24 associate?

1 A. I'm -- if there is one, I'm not aware of
2 what it is.

3 Q. Okay.

4 Now, you were aware of -- obviously you've
5 reviewed Professor Cutler's and Professor Gruber's
6 report.

7 Do you know -- do you have a professional
8 relationship with either one of them?

9 A. I wouldn't say I have a close professional
10 relationship with either of them. I've known each of
11 them casually for a long period of time, basically
12 since they've been in the profession. So I've known
13 them for 20 plus years as well, probably 30 years in
14 the case of...

15 Q. Okay. And are you aware that they are
16 also both research associates at the NBER?

17 A. That was my general recollection. I
18 didn't have specific knowledge of that outside of --
19 but, yes, I would be -- have been very surprised if
20 they weren't.

21 Q. Have you ever worked with any of them in
22 connection with your role as an -- research associate
23 at the NBER?

24 A. I haven't worked with them directly, for

1 example, on a paper or anything, but David Cutler, for
2 example, was a contributor to a volume that Bob Topel
3 and I edited. So we worked with him in that regard.
4 He participated in the corresponding conference.

5 I probably dealt with David Cutler
6 probably more frequently than Jon -- Jonathan Gruber,
7 but at time to time over the years I've come across
8 them at conferences and other things, some affiliated
9 with the NBER, some of them not.

10 Q. Sure.

11 And with respect to Professor Cutler, you
12 said that he contributed to a volume that you edited.
13 Which volume or publication was that?

14 A. It is a -- it is one of the books listed
15 on my -- on my vitae. It's "Measuring the Gains For
16 Medical Research: An Economic Approach." So I
17 believe David Cutler had a piece in that one.

18 Q. Do you recall what his specific
19 contributions were?

20 A. No.

21 Q. I was hoping they'd be very memorable for
22 you.

23 A. It was probably memorable at the time, but
24 if you notice the date, it was 2003, so it's roughly

1 15 years ago, so it's pretty far back in time.

2 Q. Fair enough.

3 With respect to Professor Cutler, do you
4 have a level of professional respect for him?

5 MR. HALLER: Objection; vague.

6 BY THE WITNESS:

7 A. I think he is reasonably -- I think he is
8 reasonably well regarded in the health economics
9 community. So I -- I think I would generally share
10 that opinion.

11 BY MR. KO:

12 Q. What about with respect to
13 Professor Gruber, do you respect him?

14 MR. HALLER: Same objection.

15 BY THE WITNESS:

16 A. I think he is a -- probably a little less
17 well known than Professor Cutler. I don't know as
18 much of his work. I don't think he has had as much of
19 an impact on the profession. So I -- I -- I guess I
20 wouldn't place him at the same point.

21 BY MR. KO:

22 Q. And when you say "impact on the
23 profession," are you talking about the profession of
24 economics or health economics in particular or both?

1 A. I think either. I -- because I know
2 Jonathan has done work in health economics. He also
3 dabbled some in labor economics. So I don't -- I
4 don't think his contributions would -- would rank as
5 highly.

6 Q. Okay.

7 Going back to your CV on Page 1 with
8 respect to your current position -- positions,
9 regarding your work at the Becker Friedman Institute,
10 can you describe to me what the Becker Friedman
11 Institute does?

12 A. Yes. It's a -- it's actually titled the
13 Becker Friedman Institute for Research and Economics.
14 So it supports economic research of the faculty at
15 Chicago as well as people from around the country. So
16 it -- it engages in direct research support that helps
17 people gather data, hire support to work on their
18 data -- on their research products, it runs a large
19 number of conferences that bring researchers together
20 from around the country to discuss important topics
21 from an economic as well as policy perspective, it has
22 a pretty significant outreach program that tries to
23 make economics -- economic teachings and understanding
24 accessible to a broad population within the profession

1 as well as outside the profession.

2 I was one of the directors of the Becker
3 Friedman Institute writ large up until, oh, I don't
4 know, a little over a year ago and that was -- those
5 were really our goals. We wanted to really support
6 high quality research and help support people
7 disseminating what they have learned and making it
8 useful to people more broadly.

9 Q. Okay. So when you said a moment ago that
10 you were the director of the entire institute, that
11 position has changed, now -- you are now a co-director
12 of what I understand is a -- is a subgroup of the
13 Becker Friedman Institute.

14 Is that fair to say?

15 A. That's roughly correct. I wasn't the -- I
16 was the co-director actually even at that level. But
17 I was the co-director of the Becker Friedman Institute
18 together with Lars Hansen who was the other
19 co-director at the time.

20 Q. And how long were you a co-director at
21 Becker?

22 A. Probably about three years.

23 Q. Okay. And when you said that they support
24 faculty at Chicago, are you talking about Booth or are

1 you talking about University of Chicago as a whole?

2 A. It is much broader than Booth. And
3 that -- in fact, one of the goals of the Becker
4 Friedman Institute has been to promote a broader
5 economics community at Chicago, that is, support
6 people at Booth, at the Harris school and the law
7 school and the medical school and the economics
8 department and really facilitate those different
9 groups interacting with each other because we always
10 felt that bringing the people together -- together
11 with bringing in people from outside Chicago was the
12 best way to create great ideas and -- and really first
13 quality work. So that kind of unifying Chicago
14 together as well as integrating them more closely with
15 the broader economics community was probably the major
16 goal of the Becker Friedman Institute.

17 Q. And does the institute work with any
18 entities?

19 MR. HALLER: Objection; vague.

20 BY THE WITNESS:

21 A. I would say -- I -- we don't really work
22 with -- with other entities on a long-term basis. We
23 sort of have partnered with various groups, for
24 example, for specific conferences and things like

1 that. So we've done some things along with the Fed,
2 we've done some things along with other groups where
3 we felt that was a fertile combination.

4 But we've really focused most on providing
5 a forum that would bring people together and allow
6 them to kind of chart their course and do the best
7 research they could.

8 Q. Now, I also understand, as we've discussed
9 a moment ago, you work with CRA, correct?

10 A. That's correct.

11 Q. And what is your position at CRA?

12 A. I'm a consultant to CRA. So I don't
13 have -- I'm not an employee of CRA. So I'm a
14 consultant to CRA.

15 Q. And -- and how long have you been at a
16 consultant at CRA?

17 A. I think about five years.

18 Q. Okay. Is there any reason why you didn't
19 disclose that role in the list of current positions
20 that you have?

21 A. I don't think -- because it's -- I don't
22 have a position there. I'm not -- I'm not employed by
23 CRA, so it's not my -- I don't have as an official
24 position. I just serve in a consulting capacity to

1 CRA.

2 Q. Do you get paid by CRA?

3 A. I get paid based on the consulting work I
4 do. So I sub -- I submit my hours and billing for the
5 work I do and I get paid based on that, but I don't
6 draw a salary, for example, from CRA.

7 Q. Okay. I also understand that you -- well,
8 are you familiar with the Hoover Institute?

9 A. Yes, I am.

10 Q. Okay. And it's my understanding that you
11 are a senior fellow at the Hoover Institute, is that
12 correct?

13 A. Yes, I am.

14 Q. Okay. And how long have you been a senior
15 fellow there?

16 A. Three or four years.

17 Q. Okay. And do you receive any compensation
18 in connection with your role as a senior fellow at the
19 Hoover Institute?

20 MR. HALLER: Objection. I -- I don't know the
21 relevance of that.

22 I mean, if you are comfortable explaining
23 that, that's fine with me, but...

24 BY THE WITNESS:

1 A. I receive some compensation from the
2 Hoover Institute as part of my affiliation with them.

3 BY MR. KO:

4 Q. And what is the amount of that
5 compensation?

6 MR. HALLER: Same objection.

7 BY THE WITNESS:

8 A. I don't recall. It's -- it's a -- I don't
9 recall exactly what it is.

10 BY MR. KO:

11 Q. Do you have any understanding of whether
12 or not it's compensation that's tied to any other
13 compensation you receive or is it separate, standalone
14 compensation?

15 A. It is standalone compensation.

16 Q. Okay. Is it over \$50,000?

17 A. No, it's not.

18 Q. Is there any reason why you didn't
19 disclose the fact that you were a senior fellow at the
20 Hoover Institute in your current positions list of
21 your CV?

22 A. Primarily because I don't really -- I
23 don't really do that much for the Hoover institution
24 on a regular basis, so it is not a regular part of my

1 activities.

2 Q. Well, when -- what do you do for the
3 Hoover Institute?

4 A. Mostly what they ask me, if there's --
5 going to have a conference and they want somebody to
6 speak at a conference, I will speak at a conference
7 for them, or if they are hosting their -- their
8 council, I think they have a council of outside
9 individuals who advise them on their program and
10 support their program. So often I'll speak at those
11 and talk about my research and talk about my academic
12 work. And that's really what I've been doing for
13 Hoover. I don't teach any classes, I don't oversee
14 any programs. I -- I really just do what I do for
15 many other organizations, which is come in and talk
16 about the kind of work that I do.

17 And so I think the difference between
18 doing that for Hoover and what I would do for numerous
19 organizations who might request that I come speak is
20 it's kind of more of an ongoing thing with Hoover,
21 whereas the other ones, it is more of a one-off
22 speaking engagement.

23 Q. That's helpful.

24 Do you work with any other -- any of the

1 other senior fellows at the Hoover Institute?

2 MR. HALLER: Objection; vague.

3 BY THE WITNESS:

4 A. Not at -- in Hoover activities. In --
5 Eddie Lazear, who is also, I believe, a senior fellow
6 at the Hoover Institute, he helps with a summer camp
7 that I run for Ph.D. students as part of the Becker
8 Friedman Institute. So Eddie comes to Chicago in the
9 summer for a couple of days and teaches a couple
10 lectures as part of our summer camp. So I -- he is
11 also a Hoover affiliate, but he is actually working
12 together with me as part of the Becker Friedman
13 Institute.

14 Q. Do you know Daniel Kessler?

15 A. Not well.

16 Q. And today we are here at the offices of
17 Alvarez & Marsal.

18 Do you have any connection with them?

19 A. Not that I'm aware of or I recall.

20 Q. Okay. Now, I understand from your CV that
21 you got your Ph.D. at the University of Chicago, and I
22 appreciate that you've disclosed your thesis topic on
23 here as well.

24 Do you recall being part of any

1 organizations or groups during your time at the
2 University of Chicago when you obtained your Ph.D.?

3 MR. HALLER: Objection; vague.

4 BY THE WITNESS:

5 A. I do not.

6 BY MR. KO:

7 Q. Okay. Do you recall receiving any honors
8 or awards when you were at University of Chicago
9 getting your Ph.D.?

10 A. I believe I did. I think I got various
11 awards associated with fellowships, for example. I
12 think when I was getting my Ph.D. I got an award from
13 the Friedman Fund, I recall. I think I got also an
14 Earhart Foundation fellowship, I believe. There may
15 have been others. I don't remember them all.

16 Q. I'm sorry. What was that second one?

17 A. Earhart Foundation fellowship. They
18 provide graduate student fellowships at the time.

19 Q. Do you recall the amount of those
20 fellowships?

21 MR. HALLER: Objection; vague.

22 If you remember, and I -- I don't see the
23 relevance.

24 BY THE WITNESS:

1 A. They were a lot less than graduate
2 students get today. I think they were, like, \$6,000
3 or something like that.

4 BY MR. KO:

5 Q. Okay. In connection with your
6 undergraduate studies at UCLA, do you recall receiving
7 any honors or awards at UCLA?

8 A. I think I also had an Earhart Foundation
9 fellowship when I was an undergraduate at UCLA.

10 Q. Other than that, do you recall any other
11 awards, honors or fellowships?

12 A. I -- I don't know. I think I graduated
13 Phi Beta Kappa. I guess that's an award. I don't
14 know if there were others, to be honest.

15 Q. Well, actually, I see you've listed --
16 you've listed them in your CV, so, or a couple at
17 least.

18 Turning to Page -- well, the bottom of
19 Page 2 of your CV, you've set forth certain
20 publications.

21 Do you see that?

22 A. Yes.

23 Q. Does the CV contain all of the
24 publications that you have either authored or

1 coauthored?

2 A. It attempts to. There may be something
3 missed along the way or something that was lost over
4 the years, but to the best of my abilities, it does.

5 Q. And on Page 9 in particular, you've --
6 after you've gone through articles that you've written
7 and -- and books and chapters in books, you've
8 disclosed selected working papers.

9 Do you see that?

10 A. Yes.

11 Q. First of all, what's your definition of a
12 working paper?

13 A. It's a -- there is a wide range. Some are
14 papers that, you know, are virtually ready for
15 publication that have not yet been published, other
16 papers are things you just started on and really are
17 in a very crude form. So I don't think -- it's not a
18 very precise definition, as I understand it. It is
19 not even clear when something transits from being a
20 collection of papers of notes that you are working on
21 to being a working paper, so. I would say it's --
22 it's not very systematic what actually ends up being
23 called a working paper.

24 Now, some working papers you submit to a

1 working paper series, so you've -- you've made the
2 decision I'm going to put it in the Becker -- in the
3 BFI working paper series, in the NBER working paper
4 series, and then that's probably a working paper
5 almost by definition.

6 For the things that don't really go, like,
7 through a channel like that, I think it's pretty
8 unclear when it transitions to being a working paper.

9 Q. And working papers are not peer reviewed,
10 correct?

11 A. They don't have to be. Some of them might
12 have been, if you're sort of in that limbo stage
13 between maybe getting it peer reviewed and getting it
14 actually published, it might still be called a working
15 paper until it gets peer reviewed.

16 Q. With respect to the working papers that
17 you list here, did any of them eventually become peer
18 reviewed?

19 A. Yeah, the -- for example, but probably
20 with a changed name, like this "Manipulation of Child
21 Preferences, Old Age Support and Investments in
22 Child" -- "Children's Human Capital," that paper kind
23 of morphed into another paper that's on my vitae
24 that -- that's there. The -- that would be the one

1 that I see.

2 And what usually happens is things get
3 taken out of the working paper category when they get
4 moved into the peer-reviewed publications. So
5 sometimes if they change enough they stay there, too,
6 and they get added, but I think most commonly things
7 would have been working papers and then become peer
8 reviewed and ultimately published.

9 Q. Regarding the penultimate article or
10 working paper you list in this section on Page 9
11 titled "Activating Actavis With a More Complete
12 Model," can you describe to me what that marketing
13 paper was about?

14 A. Yeah, that was a working paper I did
15 looking at drug and -- and settlements in -- in -- in
16 generic drug patent litigation cases. So I did that
17 along with a number of other individuals. And I think
18 that ultimately -- I'm -- I'm not sure, actually,
19 where that paper has ended up, but for me, I -- it
20 ended up on this working paper list.

21 Q. And what was the primary point of that
22 working paper?

23 A. I think it was to try to understand the --
24 the economics of what goes into those kind of

1 settlements and why, in fact, those settlements look
2 the way they do in many cases.

3 Q. And what conclusion did you and your
4 coauthors draw from looking at those settlements?

5 A. That there were a lot of reasons why you
6 would see payment flows that would be consistent with
7 kind of the underlying economics, so that was kind of
8 the conclusion we reached.

9 Q. When you say "payment flows," what are
10 you -- what do you mean?

11 A. That you might, for example, see a payment
12 flowing from the holder of the patent to other
13 individuals, other challengers of those patents,
14 reflecting the fact that there was substantial value
15 to be gained in establishing certainty over where the
16 market was headed going forward. That was one of the
17 main points that we had. There were a variety of
18 points in that paper.

19 Q. Did you focus at all or analyze, generally
20 speaking, the difference between generic and -- and
21 specialty drugs?

22 MR. HALLER: Objection; vague.

23 BY THE WITNESS:

24 A. No, I think it was -- it was more the

1 interaction between generic entrants and brand name
2 pharmaceuticals -- pharmaceuticals already in the
3 marketplace. So it wasn't so much a distinction
4 between them.

5 BY MR. KO:

6 Q. Well, thank you for that clarification, I
7 actually did mean generic and brand, but do you recall
8 examining any settlements outside of those made in
9 patent litigation for purposes of this working paper?

10 A. I don't recall, but I don't have a great
11 detailed recollection of what was there at the time.

12 Q. When you say that you have -- in your CV
13 you've disclosed selected working papers, why have you
14 just disclosed some and not all?

15 A. Partly for the reason I said before. It
16 is not clear what a working paper is. Also, they tend
17 to come and go. Sometimes papers, you know, you --
18 you are working on them and then you decide, Well, I'm
19 going to set that one aside for a while. So I -- I
20 don't focus too much on keeping track of all of the
21 projects I'm working on at a time.

22 Q. The same question with respect to the next
23 section of your CV, "Selected Comments." Well,
24 actually, let -- let me back up.

1 You've included in your CV a handful of
2 comments that you've made, I presume, on -- on
3 articles and other academic publications.

4 Do you see that?

5 A. Yes.

6 Q. And you've indicated that they are
7 selected comments.

8 Can you describe to me why you've selected
9 some and perhaps not others?

10 A. I would say they are selected because I
11 don't generally keep track of all of the comments. So
12 comments that I've -- you know, was aware of at a
13 point in time and put on the vitae are there. I will
14 have commented on many papers over time and I don't
15 always put them in. Again, it's not been -- not been
16 a focus of mine to focus on comments that I've made on
17 other people's work.

18 Q. And the next section of your CV on
19 Page 10, you list "Popular Press Articles."

20 Do you see that?

21 A. Yes, I do.

22 Q. And so I assume that you've written more
23 articles in the press than just the four that you list
24 here?

1 A. I think so, yes.

2 Q. Can you identify for me why you've listed
3 these?

4 A. I think when I was putting my vitae
5 together at one time these were ones that I was aware
6 of and they were put in there and I really haven't
7 gone back to keep track of things that have happened
8 since then. So it's kind of a legacy of what I had
9 available at the time.

10 Q. Okay. And the next section down you've
11 referred to articles that have been, I believe,
12 written about you, correct?

13 A. Yes.

14 Q. And is there any reason why you've listed
15 these and -- and not others?

16 A. I don't know if there are others, but I,
17 again, it's not been a focus -- I -- I hate reading
18 things about myself, so I try to avoid reading them
19 whenever possible. These are the ones -- these are
20 the ones that I'm aware of, actually. I don't -- I'm
21 not aware of other articles about me.

22 Q. Now, with respect -- you said that you've
23 compiled this CV. I assume throughout your
24 professional career.

1 Have you prep -- prepared this CV that we
2 are looking at as well?

3 A. I try to keep track of it, particularly
4 with regard to the testimony part of it. I try to add
5 them or have them added as I go because that's the
6 best way to keep track of them, which is why you see
7 the -- at the end just everything listed that happened
8 since the time of the report being issued. So I try
9 to add things in real-time as they get added.

10 Q. Who helps you compile your CV?

11 A. Deanna Siller, who is my assistant at
12 Charles River Associates, helps handle parts of my CV,
13 Virginia Bova, who is my assistant at the University
14 of Chicago, also helps updating with my CV.

15 Q. And do you have a CV for your expert -- a
16 separate CV for your expert work and one for your
17 academic work or is it the same CV?

18 A. I tend to -- I mean, the -- it is
19 basically my academic CV tends to be the first part of
20 this CV without the testimony. That's basically -- I
21 don't maintain two separate CVs for that purpose. I
22 just use the first part without the testimony as my
23 academic CV.

24 Q. And have you tailored or revised your CV

1 in any way for purposes of this litigation?

2 A. No, other than it has been updated, like
3 it always is, to try to keep it -- it -- keep it
4 current.

5 Q. Okay. I want to now turn back to -- well,
6 not back, but let me go ahead and hand you what has
7 been marked as Murphy Exhibit 2, which Juliana will
8 hand you shortly.

9 MR. KO: David, there's --

10 MR. HALLER: Okay. Thanks.

11 MR. KO: -- copies right here.

12 MR. HALLER: Professor Murphy also has a -- a
13 bound, spiral bound copy of his report which he might
14 also prefer to refer to if you don't have an objection
15 to that.

16 MR. KO: I don't.

17 BY THE WITNESS:

18 A. I'll use this one because it is a little
19 bit easier to --

20 BY MR. KO:

21 Q. To turn the pages?

22 A. -- keep them open.

23 Q. Just so the record is clear, Exhibit 2
24 that I have handed you is a copy of your expert report

1 with all appendices.

2 And is that identical to what you have in
3 the bound copy that you brought with you today?

4 A. I'm just trying to make sure it ends at
5 the same place. Obviously I can't check every page,
6 but it appears to be. If there is anything that's not
7 here, we'll just refer to that one.

8 Q. All right. I understand that your report
9 contains three appendices, A, B and C, is that
10 correct?

11 A. Yes, I believe that is correct.

12 Q. And does the bound version that you have
13 in front of you also contain those three appendices?

14 A. Yes. That's what I was just checking.

15 Q. Okay. Great.

16 Now, this report that you've submitted in
17 this case obviously contains the opinions that you
18 intend to offer if called upon at trial, correct?

19 A. They -- it contains the opinions that I
20 had as of the time that I wrote the report. Obviously
21 if new information comes in or other issues arise in
22 the case, I will try to address those as best as I can
23 based on that new information, but it -- it was a
24 disclosure of the opinions I expected to give as of

1 the time of the report.

2 Q. And as of today's date, are there any
3 opinions outside of this report that you are aware or
4 intend on providing in this case?

5 A. I would say in the -- in the scope of
6 broad opinions, no. As I think was mentioned at the
7 beginning, there are some updates to what I wanted --
8 what's in the report. So that would -- I would
9 consider part of my opinions in this case. And I'm
10 happy to talk about those today, if you'd like.

11 Q. Yes, let's talk about those actually right
12 now.

13 Can you describe to me what updates you've
14 made to your report?

15 A. Yeah, there really is -- there is really
16 two updates. Let me take the really simple one first.
17 If you turn to Exhibit, I believe, is Exhibit 40 --
18 44.

19 Q. Can you tell me what page that's on?

20 A. It's on Page 126.

21 Okay. And it -- it -- the footnote of
22 sources says ARCOS. That's not correct, that that
23 should be, as is described in the text, NSDUH,
24 National Survey on Drug Use and Health. So I think,

1 if you read the text, it is pretty clear that that's
2 where it came from because that's what it says in the
3 text, but the footnote inadvertently put ARCOS
4 instead. So that should be changed.

5 Q. Okay. So the one change you've made in
6 your report is to Exhibit 44 and the sources that you
7 cite are NVSS and NSDUH data and not NVSS and ARCOS
8 data, correct?

9 A. That sounds correct, yes.

10 Q. All right. And with respect to this
11 graph, I did notice there is some missing data with
12 respect to the NSDUH information for 2014. And I
13 think I know the answer to this, but let me ask you:
14 Did I -- am I reading the graph correctly and there is
15 a gap in the NSDUH data?

16 A. Yeah, there's two series that are there.
17 There is a pre-2014 series that is there. There was
18 some changes in the way in which things were done, and
19 there is a post-2014 series. They are trying to
20 measure the same things, so I think it is fair to put
21 them on the same graph, but they are slightly
22 different in that regard.

23 Q. And do you recall what changes were made?

24 A. It was changes in the way the -- the -- as

1 I recall, it was changes in the way they -- they --
2 the questionnaires worked, but I don't have a specific
3 recollection beyond that.

4 Q. And the questionnaire is provided by the
5 NSDUH to?

6 A. It's -- it is a survey that they use to
7 assess drug use and health and like most surveys they
8 changed their methodologies over time at certain
9 points, and this is one of those with regard to this
10 issue.

11 Q. So for purposes of your corrected
12 Exhibit 44, you have data that is missing from 2014 as
13 a result of these changes that they were -- NSDUH
14 was -- was trying to make, is that your testimony --
15 do I understand your testimony correctly?

16 A. My understanding is that there are -- as
17 I'm rec -- recall it, there are two different
18 methodologies that -- one for the later period and one
19 for the earlier period and there is -- they split at
20 2014 is the way I understand it.

21 Q. And what were these two different
22 methodologies?

23 A. I don't recall the specifics, but it was
24 in the way in which the data were gathered. What they

1 are trying to measure is the same thing which is
2 opioid use disorder, but...

3 Q. So this is the first, I believe you said
4 you made a few changes to the report, so this is the
5 first change that you wanted to make.

6 Can you describe to me what additional
7 changes were made?

8 A. Yeah. The -- the second one is in several
9 places in the report where we are looking at deaths of
10 despair measures, we talk about a Method 1 and a
11 Method 2. And the changes I des -- I'm going to
12 describe for you will regard Method 2.

13 And in Method 2 we measure all of the
14 deaths of despair, measure it as a rate, and then
15 subtract the Plaintiffs' estimates -- the Plaintiff
16 expert's estimate of the ones associated with opioids
17 to get kind of a non-opioid number.

18 And it came to my attention that when we
19 did that subtraction, the Plaintiffs were using a
20 different denominator for the population. So, in
21 other words, they were looking at a certain number of
22 deaths and dividing by the adult population, whereas
23 my calculations had divided by the -- the -- the
24 overall population. And you really should use the

1 same denominator for both.

2 Now, the deaths are kind of overall, so
3 you might say I want to use the overall population,
4 but -- but anyway -- at any rate, you want to make
5 them the same. So the revision is to adjust their
6 number to correspond to the same denominator that I
7 used for my calculations. That causes my Method 2
8 numbers to be slightly different than they would have
9 otherwise been. So the exhibits that use that
10 Method 2 are going to change reflecting that.

11 Now, the qualitative opinions aren't going
12 to change, but the numbers are going to change
13 themselves. In general, they got closer to Method 1.
14 So the discrepancy, the difference between Method 1
15 and Method 2 actually gets smaller when you make this
16 adjustment, because this adjustment sort of
17 overcorrected in some sense because it used a smaller
18 number in the bottom of the fraction which tends to
19 make the fraction bigger, the number bigger, which
20 tends to give you a bigger correction. So when you
21 make that adjustment, the numbers get closer to
22 Method 1.

23 And so that's going to affect four
24 exhibits in the report and four corresponding appendix

1 exhibits that have the full regression results. So
2 there will be four regression results in the report
3 affected and four results in the appendix, which are
4 really the same results, it just lists all of the
5 coefficients from the regressions rather than just
6 those selected ones.

7 Q. Can you identify for me which -- let's
8 start with the exhibits, do you recall which exhibits
9 you made the adjustment to?

10 A. Yes, it is all of the ones that we were
11 using for the Method 2 for the death of despair, so we
12 can start at the end because we are very close to the
13 end now.

14 Q. Great.

15 A. So there's two exhibits. Yeah, so
16 Exhibits 42 and 43. In those exhibits the numbers
17 associated with the coefficients for Method 2 as well
18 as the other things in that row will change. So --

19 Q. For both Exhibits 42 and 43 --

20 A. For both exhibits, the second set of
21 numbers, the second row of numbers will change
22 somewhat if we make -- when we make this adjustment.

23 Q. In addition to Exhibits 42 and 43, which
24 the changes, as you said, were made to Method 2 in

1 each of those exhibits, what were the other two --

2 A. Yeah.

3 Q. -- exhibits for which the adjustment was
4 made?

5 A. I'm going to go find them for you now.

6 Let's go to Exhibit 26, that's the next
7 one I -- I find.

8 Q. I believe that's on Page --

9 A. 81.

10 Q. 81. Thank you.

11 A. Okay.

12 Q. And so staying on Exhibit 26 for a moment,
13 just to be clear to make sure I understand, again, the
14 shipment coefficient for Method 2 is the one that's
15 changing?

16 A. Right. So the 0.61 in the first row
17 wouldn't change but the second one, which is now 2 --
18 in 2.04 listed here is going to become smaller. That
19 is closer to what you get for Method 1.

20 Q. And do you recall actually what that
21 specific adjustment -- or coefficient is?

22 A. Off the top -- I don't want to -- I don't
23 want to speculate. I think I know what it is, but I
24 don't want to guess. I think I could give it to you.

1 I think it is 1.61. That's -- but don't hold me to
2 that one.

3 Q. I won't.

4 A. It is on that order of magnitude --

5 Q. Okay.

6 A. -- something like that.

7 And then there is one more. I'm trying to
8 find that.

9 Do you know where it is?

10 Q. 64.

11 A. 64. Okay.

12 Q. Page 64.

13 A. I'm just not there yet. Okay. I thought
14 maybe I had passed it.

15 Yeah, there is -- there is 64. And --

16 Q. Page 64, right?

17 A. I'm sorry. Page 64, Exhibit 19.

18 Q. Okay.

19 A. Again, what will change is Method 2, not
20 Method 1, and that coefficient in this case will get
21 larger because it is going to get closer to Exhibit --
22 to the coefficient for Method 1, and I don't recall
23 what that one is.

24 Q. So the changes that you have made that we

1 are describing here when adjusting for the population
2 of deaths that you have analyzed, the changes you've
3 made are to Exhibits 19, 26, 42 -- or sorry -- 40 --
4 yeah, 42 and 43?

5 A. Correct.

6 Q. Okay.

7 A. And then there are corresponding appendix
8 tables that have exactly these results but show the --
9 all of the regression coefficients. So those
10 corresponding tables will change for the --

11 Q. And are all -- go ahead.

12 A. And I -- I think we could go through them,
13 but it's -- it is actually the same set of regression
14 results. It's just in the text we only show these
15 coefficients, whereas in the appendix we show all of
16 the regression coefficients from the same regression.

17 Q. And those are the regressions that are
18 contained in Appendix C, correct?

19 A. Correct.

20 Q. Okay. And I just want to make sure I
21 clearly understand the adjustment that you made. So
22 in Plaintiffs' expert reports when counting the
23 deaths, they have defined the population as adults and
24 your analysis expanded that universe, I believe is

1 that what you -- or --

2 A. No.

3 Q. That's what I thought.

4 A. The deaths are the same. They divided it
5 by the adult population to make it into a rate. I
6 divide it by the broader population and that gives you
7 a different rate. In general, it is a lower number
8 because you have got the same number of deaths spread
9 over a broader population.

10 Now, you might say the way I did it is
11 more like I got the same group in both numerator and
12 denominator, it is not that different in terms of how
13 it changes over time because those two populations
14 move pretty closely together, but when you are
15 subtracting one rate from another, it makes a
16 difference. You want to have the same rate in the
17 denominator, which is why I made that correction.

18 Q. Thank you for that clarification.

19 So with respect to the adult population
20 that Plaintiffs' experts used, did you have an
21 understanding of how they defined that adult
22 population?

23 A. I did. I don't recall specifically, but
24 it's in their documents, and alls we did was take

1 their number and multiply by the ratio of those two
2 populations and that takes their number and puts it
3 into the same units that I'm measuring things in and
4 then you subtract.

5 Q. Understood.

6 A. You could have used their population and
7 corrected -- and changed my numbers to correspond to
8 their population, you'd get extremely similar results
9 to the revision I did. They are basically the same.

10 Q. And what was the basis for making the
11 adjustment that you did?

12 A. Well, I just wanted to have the same
13 population for the two numbers I was subtracting from
14 one another. I think if you are going to subtract one
15 from the other, you do want to have the same
16 population, which is why I thought it was important to
17 make that change.

18 Q. I see. So in your original analysis
19 before correcting Exhibits 19, 26, 42 and 43, you had
20 used -- you -- you had obviously analyzed the
21 Plaintiffs' experts' calculations to include the adult
22 population and then you analyzed it against the
23 broader adult population, but the adjustment you made
24 is essentially apples and apples, now the original

1 calculation includes the broader adult population,
2 correct?

3 A. Yeah. You could have done apples and
4 apples or oranges and oranges and it really wouldn't
5 matter which one you did in terms of the results you
6 get, but you wanted to do one of those two things.
7 And so what I just redid it to put it in the same
8 formulation with what my Method 1 did.

9 Q. Okay. Thank you. That's helpful.

10 In addition to the changes that you've
11 made that we've just discussed and the change to the
12 cite in Exhibit 44, any additional changes that you've
13 made to your report?

14 A. No. Those are the -- that's the
15 changes -- those are the changes I'd like to make.

16 Q. And with respect to the second category of
17 changes that we just discussed in the four exhibits,
18 are you planning on providing an update with the
19 updated regressions or are you just -- just disclosing
20 that you've done that for purposes of this deposition?

21 A. I think I would prefer to provide an
22 updated version that reflects the revised numbers per
23 our discussions. So it is going to be very similar to
24 what we just discussed, but I -- I think we would

1 provide an update.

2 Q. Okay.

3 A. And we'll update the exhibit to get the
4 ARCOS replaced with the other survey.

5 Q. Thank you. I appreciate that.

6 So with respect to this report as a whole
7 that you are offering, did you draft this entire
8 report yourself?

9 MR. HALLER: Objection. On that question I
10 think you can sort of yes or no, but I -- we don't
11 think the drafting process itself is discoverable and
12 is protected by the Federal Rules, but I think on that
13 general question you can say yes or no, but if you get
14 further into who drafted the initial version of a
15 particular sentence or section, then I'll instruct him
16 not to answer.

17 BY THE WITNESS:

18 A. No, I worked together with my staff on
19 drafting the report which is my standard practice.

20 BY MR. KO:

21 Q. And -- and the staff, again, to be clear,
22 the staff is staff at CRA, correct?

23 A. It would be the staff at CRA and the
24 primary people I worked with are the three people I

1 talked about earlier in our discussion.

2 Q. Did you have a primary contact for
3 purposes of preparing this report at CRA amongst those
4 three or did those three all work together with you in
5 creating this report?

6 A. I would say two of the three, Jarrod Welch
7 and -- and Sean Taylor were the primary people I would
8 have had contact with, although Daniel Garcia Schwartz
9 would have been not that far behind.

10 Q. And outside of Jarrod, Sean and Daniel,
11 were there other individuals at CRA that assisted with
12 the preparation of your expert report?

13 A. There are other people at CRA who would
14 have worked on assisting and doing the analyses. As
15 far as I recall, I don't think anyone else worked on
16 the report itself specifically.

17 Q. So in terms of drafting, it was mostly
18 Jarrod and Sean and to a certain extent Daniel, and
19 then other individuals, as I understand it,
20 supported -- other individuals at CRA supported the
21 empirical work that's in your report.

22 Is that fair to say?

23 A. It might have been -- I wouldn't say just
24 empirical work. I mean, there is a lot of gathering

1 documents and putting together cites and things like
2 that. So there would have been people who would have
3 helped with all of that process as well. You know,
4 getting the footnotes correctly organized and things
5 like that. So there is -- there is a lot of kind of
6 clerical aspects of putting together a report that
7 other people would have helped with, but the people I
8 worked most directly with on -- on kind of substance
9 would have been the three I discussed.

10 Q. And have you worked with these two or
11 three individuals before in other expert work that you
12 have provided outside of this litigation?

13 A. Yes, I have. I have worked with all three
14 of them for a fair period of time.

15 Q. And when you say that's your standard
16 practice for them to be part of the preparation of the
17 drafting of your report, was the process that you
18 undertook in this case similar to the process that you
19 followed in other cases where they've provided support
20 for you?

21 A. I would say in a general -- general, yes.

22 Q. Okay. And with respect to the other
23 expert work, does -- in the last five years, does CRA,
24 have they assisted you for every expert engagement?

1 A. I believe in the last five years they
2 have. Prior to that I may have done other things, but
3 it's my understanding that they are the -- I would
4 have been assisted by people at CRA for all of the
5 things I've done in the last five years to the best of
6 my knowledge.

7 Q. Do you recall if there is any expert
8 engagement that you had in the last five years in
9 which CRA did not assist you?

10 MR. HALLER: Objection. Asked and answered, I
11 think.

12 BY THE WITNESS:

13 A. I don't -- not that I recall, although,
14 you know, sometimes people just ask me personally for
15 some help on something, but nothing that would rise, I
16 don't think, to the level of a formal engagement.
17 Obviously people come up and ask me for advice on
18 things and I'll give them advice. I don't think I'd
19 bill them for it either, though, so it's -- it's
20 pretty much -- anything that was a formal engagement
21 would have been done through CRA.

22 BY MR. KO:

23 Q. And before you became a consultant at CRA,
24 did you work with any other litigation support firms?

1 A. I did. In fact, Sean Taylor, for example,
2 worked with me in our previous engagement where I was
3 previously with Navigant. And so when I was at
4 Navigant, many of the same people who were working
5 with me at CRA worked with me previously at Navigant
6 and many of those people even worked with me before
7 that when we were with a much smaller firm called
8 Chicago Partners. So a lot of the teams I -- people
9 I've worked with have been with me for much longer
10 than I've been at CRA.

11 Q. And approximately how long were you at
12 Navigant?

13 MR. HALLER: Objection; vague as to being at
14 Navigant.

15 BY THE WITNESS:

16 A. Well, I worked --

17 MR. KO: What would you like for me to say?

18 BY THE WITNESS:

19 A. Actually, at Navigant I think I was
20 officially an employee, so that might be fair to say I
21 was at Navigant. So I was there about five years, I
22 think, about the same amount of time I've now been at
23 CRA.

24 BY MR. KO:

1 Q. And what was your position at Navigant?

2 A. I don't know.

3 Q. And prior to that you said you were at
4 Chicago Partners.

5 How long were you there?

6 A. Oh, at least ten years.

7 Q. And did both Chicago Partners and Navigant
8 assist you for purposes of preparing expert reports?

9 A. Yes, they did.

10 Q. I want to turn back to your CV which we
11 previously marked as Exhibit 5. And in particular
12 let's start at the bottom of Page 2 where you list
13 your publications.

14 For the publications that you list from
15 Page 2 through Page 10, which includes your selected
16 working papers and selected comments, are there any
17 publications, selected working papers or selected
18 comments that deal specifically with opioid use or
19 abuse?

20 MR. HALLER: Objection; vague.

21 BY THE WITNESS:

22 A. Yeah, I mean, there are ones that
23 certainly would bear on some of the issues, although I
24 don't recall whether we would have specifically talked

1 about opioids per se. You know, theory -- the work
2 I've done on rational addiction, for example, I -- I
3 think we probably even mentioned drugs and heroin and
4 other opioids. I don't know if we used the term
5 "opioids," but we -- we -- we do talk about drugs in
6 that piece. I also have some work on the supply of
7 illegal goods that also talks about illicit drugs as
8 one of the primary examples of that.

9 Again, I don't know if we specifically
10 used the word "opioids," but obviously illicit markets
11 were the focus of that paper, so that would be there.

12 BY MR. KO:

13 Q. Just -- I'm sorry to interrupt, but let's
14 go back.

15 MR. HALLER: Can we just not interrupt if that's
16 all right. I'd prefer the witness to finish the --
17 his answer.

18 MR. KO: That's fine.

19 MR. HALLER: Pursuant to the agreement set at
20 the beginning of the deposition, if that's all right.

21 MR. KO: Yeah, sure.

22 BY MR. KO:

23 Q. But I'd actually like to -- when you
24 finish your answer, just so you know where I'm going

1 to go with this, I want to talk about your theory of
2 rational addiction and what -- what article you are
3 discussing, but go ahead.

4 A. Yeah, so that would be -- those would be
5 the main ones that -- that I recall. Obviously
6 there's a number of articles that cover the more labor
7 market side of things that I talk about in the first
8 part of the report here, so they'd be very relevant
9 for the report. They don't specifically talk about
10 opioid -- opioids per se, but they are very relevant
11 to the material that's in my report, so.

12 Q. So going back to the work you've done on
13 the theory of rational addiction, can you identify, I
14 can't recall if you said that you were -- were just
15 referring to one publication or more, but can you
16 identify which articles bear on the theory of rational
17 addiction?

18 A. Yes. So I guess one of the articles that
19 bears on that is an article by that very name, which
20 is "A Theory of Rational Addiction" that Gary Becker
21 and I wrote and was published in 1988 in the Journal
22 of Political Economy. So that -- that was -- kind of
23 laid out the -- the economics of kind of addiction as
24 you can see it through pretty much a standard economic

1 model.

2 We then kind of applied that to addiction
3 regarding cigarettes. So cigarette -- there are a
4 couple of articles on cigarettes. So if you look at
5 Page 4, there is a -- a "Rational Addiction and the
6 Effect of Price on Consumption," with Gary Becker and
7 Michael Grossman in the American Economic Review.
8 There is another article, "An Empirical Anax" --
9 "Analysis of Cigarette Addiction" on Page 5, like
10 roughly in the middle.

11 Q. That's the 1994 article?

12 A. That's the 1994 article, that's correct.
13 And that's -- and, again, in the American Economic
14 Review.

15 So those are the ones that cover the
16 theory of rational addiction as -- as I recall.

17 Q. So to be clear, the -- the three articles
18 that you just described to me that are contained in
19 your CV are the ones that deal with rational addiction
20 and -- and -- and/or bear on the theory of rational
21 addiction, is that correct?

22 A. Yeah. We had sort of one piece that laid
23 out the conceptual or theoretical framework and then
24 two papers that examined some of the empirical

1 implications of that.

2 Q. Okay. And those were all 1994 and prior,
3 correct?

4 A. That's correct.

5 Q. Okay. With respect to the articles and
6 publications you identified bearing on illicit
7 markets, can you identify for me which ones those are
8 in your CV?

9 A. Yeah. Really, I think there is really
10 one, and -- and that would be "The Market for Illegal
11 Goods: The Case of Drugs," which is a 2006 article,
12 again, with Gary Becker and Michael Grossman. It is
13 on Page 7 of my vitae, slightly above the middle.

14 Q. The one that's published in the Journal of
15 Political Economy?

16 A. That's correct.

17 Q. Okay. So outside of this publication, are
18 there any other publications that you set forth in
19 your CV that bear on illicit markets?

20 MR. HALLER: Objection; vague.

21 BY THE WITNESS:

22 A. I -- I -- those would be the main ones.
23 There may be some mention of illicit markets
24 elsewhere, but those would be the main ones.

1 BY MR. KO:

2 Q. Okay. Have you ever done any research or
3 published any articles on the diversion of opioids?

4 MR. HALLER: Objection; vague.

5 BY THE WITNESS:

6 A. No, I have not published any articles on
7 the diversion of opioids. I -- part of our work on
8 cigarettes, that did cover the diversion of
9 cigarettes, so that was actually a non-trivial part of
10 what we did in those cigarette papers.

11 BY MR. KO:

12 Q. And would you say that you have done any
13 research or published articles, peer reviewed or
14 otherwise, on actual opioid use or abuse?

15 A. I --

16 MR. HALLER: Objection; asked and answered.

17 BY THE WITNESS:

18 A. I'm trying to think.

19 We've looked -- I don't think I've
20 published anything on that. I think I've looked at
21 data at that back when I was doing more work on
22 addiction, but I -- I don't -- nothing that we
23 ultimately published.

24 BY MR. KO:

1 Q. In what general timeframe are you
2 referring to?

3 A. It would have been in the mid 2 -- earl --
4 like 2004, 2005, something around there.

5 Q. And in "The Market for Illegal Goods"
6 publication that we were just discussing that appears
7 on Page 7, did you do any research or conduct any
8 empirical analysis on the market for either heroin or
9 fentanyl or carfentanil?

10 A. Not that I recall in that paper, no.
11 We are kind of at an hour-and-a-half --

12 Q. Yeah, I was just going to say.

13 A. -- so we should probably take a break, and
14 he was think -- an hour 45, so that falls short of
15 that.

16 MR. KO: That's fine with me.

17 MR. HALLER: We were all thinking the same
18 thing, so.

19 MR. KO: That's fine with me.

20 THE WITNESS: Okay.

21 THE VIDEOGRAPHER: We are off the record at
22 11:32 a.m.

23 (WHEREUPON, a recess was had
24 from 11:32 to 11:50 a.m.)

1 THE VIDEOGRAPHER: We are back on the record at
2 11:50 a.m.

3 BY MR. KO:

4 Q. Dr. Murphy, welcome back from the break.
5 When were you first retained in this
6 litigation?

7 A. I don't recall the -- the exact date. It
8 would have been sometime this winter, so sometime in
9 2019.

10 Q. So your recollection is that you were
11 retained at the beginning of this year?

12 A. I don't think it would be right at the
13 beginning of this year, but sometime during 2019.
14 That's -- that's my recollection, but I know
15 retrospective dating is not an easy task for anybody.

16 Q. And who first approached you about working
17 as an expert in this case?

18 A. I think, actually, I was contacted by Greg
19 Bell, who is at CRA, because I think my recollection
20 is they were looking for an economic expert to help
21 with a -- with the case and people internal in CRA had
22 recommended me and it may also be that people outside
23 of CRA knew of me from other things and -- I -- I'm
24 not quite sure how it got there, but I think Greg was

1 the first person who asked me about it.

2 Q. And what did he -- what did you two
3 discuss in terms of the scope of your assignment?

4 A. I don't think we discussed much. I think
5 he said he -- you know, that people were interested in
6 speaking to me about the opioid litigation and that
7 probably is about it. And I said, Sure, I'm -- I'm
8 happy to talk to them, see what -- what they're --
9 what they need and go from there.

10 Q. And then after -- after you had your
11 initial discussion with -- with Greg, when did you
12 first speak with counsel about this engagement?

13 A. I don't recall the date. It would have
14 been within a couple of weeks after that.

15 Q. And do you recall what the scope of your
16 assignment was when you spoke with counsel?

17 MR. HALLER: I think you should answer that yes
18 or no.

19 BY THE WITNESS:

20 A. Yes, to some extent.

21 BY MR. KO:

22 Q. It evolved over time?

23 A. It did, be -- partly because, you know, a
24 significant part of my assignment was to respond to

1 the reports of Plaintiff experts and they hadn't been
2 provided at that time, so knowing exactly what the
3 scope of the response was going to be was going to
4 depend on the nature of the reports that came from
5 Plaintiff experts.

6 Q. Turn to your expert report which has been
7 marked as Exhibit 2, and in particular paragraph --
8 Paragraphs 11 and 12 that appear at Page 10. Let me
9 know when you get there.

10 A. Okay.

11 Q. Does Paragraph 11 accurately reflect one
12 of the assignments that you've been provided by
13 counsel in this case?

14 A. I think it does. I think it provides a
15 summary of it. I think there is more detail to that,
16 but I think that's a reasonable place to start for
17 part of my assignment.

18 Q. And Paragraph 12 also reflects another
19 assignment you've been given by counsel in this case?

20 A. Yeah, I think it's another part of my
21 assignment. I -- I don't think it's entirely separate
22 from the first part, but, yeah, it's -- it's another
23 aspect and that was the aspect I talked about a moment
24 ago in terms of responding to particular Plaintiff

1 reports.

2 Q. Would it be fair to say that these are the
3 primary assignments or, as you put it, the aspects of
4 this engagement that you have been asked to work on?

5 A. I think in a general sense, I think
6 these -- that was my intent in writing this was to try
7 to cover the -- in a broad sense the areas that I
8 intended to address in my analysis.

9 Q. And with respect to the summary that you
10 provide in Paragraph 12, you have identified a variety
11 of -- or you've identified at least more than one of
12 the Plaintiffs' experts, but the primary assignment
13 you have been given in this case and what your expert
14 report discusses is to analyze the expert report of
15 Professor David Cutler.

16 Is that fair to say?

17 A. I would say that was the greatest focus of
18 my analysis. I think second to that would be Jonathan
19 Gruber, although I think the more specific analyses
20 tend to be in David Cutler's report, so that's
21 probably more of my attention is spent there.

22 Q. And as you indicate in Paragraph 12,
23 you've reviewed in addition to Professor Cutler and
24 Professor Gruber's report you've, in connection with

1 analyzing Professor Cutler's analysis, you've also
2 looked at other expert reports, correct?

3 A. Yeah, again, I would say largely in the
4 context of how they fit together with Professor
5 Cutler's and to some extent Professor Gruber's
6 results -- reports, and not so much as an independent
7 evaluation of those other reports.

8 Q. And are you aware -- with respect to the
9 expert report of Professor McGuire, I just want to
10 understand which report you may have reviewed.

11 Are you aware that he has submitted two
12 different reports in this case?

13 A. As a general matter, I'm aware of it. I
14 would have a hard time knowing which one is which at
15 this point. I think he -- I -- I -- I can't say for
16 sure.

17 Q. Did you review both of his reports?

18 A. I don't have a specific recollection of
19 reviewing both of his reports, no.

20 Q. You just recall reviewing one of his
21 reports?

22 A. I review -- recall reviewing at least one
23 of his reports. Whether that was two reports or one,
24 I don't recall at this point.

1 Q. And you also indicate in Paragraph 12 that
2 you've reviewed two reports that were -- were
3 submitted by Dr. McCann.

4 Are you aware of how many reports that he
5 submitted -- well, are you aware of how many
6 supplements that he submitted to his original
7 March 25th report?

8 A. I -- I'm not aware of how many. I -- I --
9 I'm not even aware that he's -- well, the last time I
10 knew I don't even think he had submitted all of the
11 things that supposedly he was going to submit. He
12 might have finished submitting things at this point,
13 but my last recollection is that there were still
14 things to come, at least I think at the time I wrote
15 my report I think that was the case.

16 Q. And turning back to Paragraph 12 and in
17 particular Footnote 7, you note that the two reports
18 of Craig McCann that you reviewed were his original
19 March 25th report and a second supplement.

20 Do you see that?

21 A. I do, but I -- my, and this is just
22 recollection, I thought he was intending to submit
23 additional materials even at that time, but I --
24 that -- that's my recollection, so.

1 Q. Beyond --

2 A. I don't have any specific knowledge of
3 that.

4 Q. Beyond the two reports that you have
5 disclosed here, have you since reviewed any additional
6 work or reports proffered by Dr. McCann?

7 A. I don't recall doing that specifically,
8 no.

9 Q. How did you select the expert reports that
10 you reviewed and have identified in Paragraph 12?

11 A. I think they were selected largely because
12 they covered the issues that -- most closely covered
13 the issues that I was working on as part of
14 Paragraph 11 but also most closely tied in to, for
15 example, Professor Cutler's work. They were the ones
16 that either relied on Professor Cutler's work or
17 provided input to Professor Cutler's work and,
18 therefore, they -- they were natural things to review
19 as part of that.

20 Q. And did you select the expert reports
21 yourself?

22 A. I don't recall whether I selected them. I
23 mean, they were cited -- they -- they were discussed
24 in the Cutler report. So I don't remember if I

1 suggested we should look at those as well or somebody
2 else did. I -- I don't recall the genesis of that.

3 Q. And you said a moment ago that you weren't
4 necessarily offering an independent analysis of some
5 of the expert reports outside of Professor Cutler's
6 report, and I just want to make sure I understand what
7 you are saying when you said that.

8 Can you describe what you mean when you
9 say that while the primary analysis focused on Cutler,
10 you're not necessarily offering a separate or
11 independent analysis of the other expert reports?

12 A. Yeah.

13 MR. HALLER: Objection; misstates the prior
14 testimony.

15 BY THE WITNESS:

16 A. I guess I would say, for example, with
17 regard -- regard to the Rosenthal report, I didn't go
18 through the Rosenthal report and try to evaluate
19 the -- all of the claims that were made in there. I
20 looked at it to see how it would fit together with
21 what Professor Cutler did, and that was the primary
22 reason for look -- for -- for going through the
23 Rosenthal report. My understanding is other experts
24 are going to address the other reports. And so I

1 didn't focus my attention on doing that.

2 BY MR. KO:

3 Q. So is it fair to say that you have not
4 offered an independent critique of Dr. Rosenthal's
5 expert report?

6 MR. HALLER: Objection; asked and answered --

7 BY THE WITNESS:

8 A. I think --

9 MR. HALLER: -- misstates his testimony.

10 BY THE WITNESS:

11 A. I think --

12 MR. HALLER: Sorry.

13 BY THE WITNESS:

14 A. Yeah, I think I would say I looked at
15 what's there to try to see how and whether that fits
16 in a coherent way with what Professor Cutler does, and
17 I don't see how the two fit together very well. How
18 you can take the output of her analysis and combine
19 that with Professor -- what Professor Cutler does and
20 answer any of the relevant questions. So, and I
21 believe I mentioned that in my report as one of my
22 opinions.

23 Similarly, when I talk about some of the
24 other reports, it's largely in the context of how they

1 fit together. When I talk about Professor Gruber, I
2 more directly address some aspects of his report
3 independently. So that would be the one where I think
4 I have a more direct evaluation of some of his
5 analyses.

6 BY MR. KO:

7 Q. With respect to Dr. Rosenthal's report,
8 you understand that she's performed and analyzed
9 certain data and has done certain time series
10 regressions in her report, correct?

11 A. That's my understanding based on reading
12 her report.

13 Q. And have you done any separate empirical
14 work in response to any of the time series regressions
15 that she has run in her report?

16 A. I have not.

17 Q. With respect to either of Professor
18 McGuire's reports, have you done any independent or
19 separate empirical work in response to the analyses
20 Professor McGuire offers in either one of his reports?

21 MR. HALLER: Objection; vague.

22 BY THE WITNESS:

23 A. I do not recall any analysis that were
24 specific to the work that he does.

1 BY MR. KO:

2 Q. So you don't recall any analysis that
3 McGuire did or you don't recall any anal -- doing --
4 performing any analysis in this litigation that
5 responds to the analysis that Professor McGuire did?

6 A. I'm saying I don't recall performing any
7 analyses that specifically address him, that -- that
8 were targeted at addressing his work. Now, maybe some
9 of the things that I do regarding Professor Cutler
10 would also apply to some of these other analyses. I
11 don't want to say they are irrelevant to these other
12 analyses, but I don't recall any specific analyses
13 directed at evaluating their work along those lines.

14 Q. In Paragraph 11 you indicate that you have
15 been asked -- well, in both Paragraph and -- 11 and 12
16 you -- you indicate you've been asked by counsel for
17 distributors to provide certain opinions.

18 Do you see those references?

19 A. Yes, I do.

20 Q. And when you say that you have been asked
21 by counsel for distributors, are you referring to all
22 counsel that -- for distributors that you set forth in
23 Paragraph 10?

24 A. I -- Paragraph 10 sets forth the

1 distributors, not the counsel, just to be clear.

2 Q. Right.

3 A. Then these are the distributors that I
4 understand are the distributor Defendants in this
5 case. My analysis is an analysis of the economics of
6 the underlying marketplace, for lack of a better term,
7 and it's not specific to any one of those Defendants.
8 I don't -- I wouldn't say, Well, geez, if I was
9 analyzing Cardinal I would do this analysis, if I was
10 analyzing McKesson I would do a different analysis.
11 My analysis would apply to distributors generally to
12 the extent it's relevant for distributors.

13 Q. In Paragraph 10 you set forth the entities
14 that you identify as being distributor Defendants in
15 this litigation, correct?

16 A. That's correct.

17 Q. And in Paragraphs 11 and 12 you indicate
18 that you have been asked by counsel for these
19 distributors to address certain aspects of this case,
20 correct?

21 A. That's correct.

22 Q. And so when you indicate that you have
23 been asked by counsel for distributors, I'm -- I'm
24 curious to know which counsel for distributors you've

1 been asked to provide these opinions for?

2 A. I would say to me I -- the request came as
3 kind of a joint request, a group request. Whether
4 every one of those counsel would be part of that
5 request, I don't know. You'd have to check with the
6 counsel. I didn't receive any independent request to
7 do something different or not to do anything that I
8 did. So my -- took it as that was what I was
9 requested to analyze by the group, and how they formed
10 that conclusion, I don't know.

11 Q. Both you and CRA have a retainer agreement
12 in this case, correct?

13 A. I think my agreement would be with --
14 through CRA, that there would be a retention agreement
15 with CRA that would specify me as the consulting
16 expert. That's how it generally works. I assume
17 that's how it works in this case.

18 Q. So is it clear that your involvement in
19 this case is memorialized in a retainer agreement
20 between counsel and CRA?

21 MR. HALLER: Objection; asked and answered.

22 BY THE WITNESS:

23 A. My -- that's my understanding. That's how
24 it generally works. If there is something different

1 in this case, I probably wouldn't know that. I don't
2 generally get involved in that contractual side of
3 things.

4 BY MR. KO:

5 Q. Do you have a separate agreement with CRA
6 in this case outside of the agreement that we were
7 just discussing?

8 A. No. I have my general consulting
9 agreement with CRA and working on a case like this
10 would fall under that general agreement that I have
11 with CRA.

12 Q. And with respect to the specific agreement
13 that CRA has with counsel, have you seen that?

14 A. I don't think I've seen the entire -- I
15 don't recall seeing it. I'm not an employee of CRA,
16 so I really can't execute those kinds of agreements.
17 I don't have that authority. I'm -- I'm a consulting
18 expert, so. CRA has a -- a consulting contract with
19 me, they also have a retainer agreement with, for
20 example, in this case, counsel, but I work through CRA
21 as a consultant to CRA. That's my understanding of
22 how it works.

23 Q. What's your understanding of who or -- or
24 which entity CRA was engaged by in this case?

1 A. I don't have a particular understanding of
2 that, about, you know, which of the specific
3 Defendants would be on a retaining letter.

4 Q. Okay. And do you have any understanding
5 of which entity or which counsel signed the agreement
6 with CRA?

7 A. I do not.

8 Q. Okay. Obviously you've been communicating
9 and preparing for this dep with the counsel that
10 you've identified before at Covington.

11 In preparing your report, did you work
12 with any attorneys or law firms outside of Covington?

13 A. Not in the preparation of the report per
14 se. I didn't work directly with anyone. I think we
15 had a -- some phone call meetings in which multiple
16 counsel were present on the call. We also had an
17 in-person meeting, I assume I can disclose this.

18 MR. HALLER: The fact of the meeting you can.
19 BY THE WITNESS:

20 A. In -- in -- in Chicago that, again, had
21 multiple counsel present at. I can't recall who all
22 they represented, but, yeah, there were multiple
23 counsel present at that meeting and on the phone
24 calls.

1 BY MR. KO:

2 Q. And was it your understanding that in the
3 in-person meeting and in phone calls that you had with
4 counsel, were all of these counsel attorneys for the
5 distributor Defendants?

6 A. That's my rough understanding. I -- I --
7 I don't think I actually confirmed that.

8 Q. Do you recall having any conversations or
9 meeting with any counsel for the manufacturing
10 defendants?

11 A. Not that I recall.

12 Q. Okay. A moment ago you talked about your
13 general agreement that you have with CRA.

14 What does that general agreement entail or
15 cover?

16 A. I think it -- I essentially have a
17 exclusive contract with CRA that I'm going to do my
18 litigation and other consulting through CRA.
19 Occasionally I'll do small non -- very different type
20 projects for other people that don't go through CRA,
21 but basically I do my consulting work through CRA and
22 that's what that agreement says.

23 Q. And does that agreement set forth the
24 terms of your compensation that you would receive in

1 connection with the expert work you provide?

2 A. It doesn't set my rate. It does say that
3 I will submit my time and I'll get reimbursed at
4 whatever my -- my -- my rate is at that point in time.
5 So, for example, it wouldn't -- it wouldn't say: This
6 is your rate of pay. It doesn't say that. But it
7 says, like, I'll do my consulting work through CRA and
8 CRA will pay me in a timely fashion and things like
9 that.

10 Q. So how do you determine with CRA the terms
11 of your compensation?

12 A. Basically essentially on an annual basis I
13 review, you know, my rate and what I charge for my
14 services and some years I -- you know, that rate will
15 change, other years it will stay fixed. It depends
16 on, you know, where I am, where the marketplace is,
17 like just about anybody else out there.

18 Q. So in this litigation CRA is charging
19 \$1400 an hour for your time, correct?

20 A. That's correct. That's my standard rate
21 at this point in time.

22 Q. And how long has that been your standard
23 rate?

24 A. I don't remember. I don't remember if

1 that changed at the beginning of 2019 or 2018, but
2 that -- that -- that -- that is my standard rate right
3 now.

4 Q. And is that rate applicable to this
5 deposition?

6 A. Yes, I have -- I -- there is only a single
7 rate for all of my activities.

8 Q. So for purposes -- if you are called on to
9 testify at trial this fall, that's also the rate that
10 you would charge, correct?

11 A. That's correct. There is -- like I said,
12 there is a single rate for independent of what hourly
13 activity that is.

14 Q. And what portion of that \$1,400 per hour
15 do you receive?

16 A. I receive 100 percent of my hourly
17 compensation.

18 Q. Okay. And obviously you said a moment ago
19 that there are years in which this fluctuates, but
20 over the course of the last five years, can you
21 describe to me what you believe is your average annual
22 compensation that you receive from CRA?

23 MR. HALLER: Objection; no foundation.

24 BY THE WITNESS:

1 A. I don't really know. I don't really keep
2 track. It varies year to year depending on how much
3 work I do. So I don't really know.

4 BY MR. KO:

5 Q. So you said earlier today that you have
6 been a consultant with CRA for at least -- or for
7 approximately five years, correct?

8 A. I believe that's right. I believe that's
9 when I started.

10 Q. So in the roughly 2014 or 2015 time period
11 you became a consultant at CRA?

12 A. I think it -- I think it's a little over
13 five years, so I think -- I -- I -- I believe it was
14 2013. I think my official start time is May. So it's
15 very close to five years.

16 Q. For 2018, do you recall approximately how
17 much you received in connection with the work you
18 performed for CRA?

19 MR. HALLER: Objection; I don't think that's
20 relevant what he generally gets from CRA. His
21 compensation in this case is relevant, but otherwise
22 not relevant. So, one, I don't know if you know, but
23 if you know, I don't think you need to answer that
24 question.

1 MR. KO: Well, David, you can stop coaching the
2 witness.

3 BY MR. KO:

4 Q. I'd ask that you answer my question. It's
5 completely relevant.

6 A. I think I -- I -- at the advice of
7 counsel, I'm not going to -- I'm not going to ask --
8 nor do I know accurately what that is, and I wouldn't
9 want to provide an un-accurate number.

10 Q. So just so the record is clear, you are
11 not responding at the advice of counsel?

12 A. I would say for two reasons. One, I don't
13 have an accurate recollection. I haven't gone back to
14 look. And, secondly, I think I have been advised by
15 counsel that that wasn't something that was relevant.

16 Q. And you're -- well, and I disagree with
17 that instruction. It is completely relevant. So I'd
18 ask the following question:

19 Do you recall whether or not the
20 compensation you received from CRA in 2018 was over a
21 million dollars?

22 MR. HALLER: You don't need to answer that
23 question.

24 MR. KO: Why?

1 MR. HALLER: Because --

2 MR. KO: What's the basis, David?

3 MR. HALLER: His compensation in this case is
4 fair inquiry. His compensation for matters outside of
5 this case is not fair inquiry.

6 MR. KO: On what grounds? Can you -- can you
7 inform to me --

8 MR. HALLER: The Federal Rules permit discovery
9 into his compensation in this case and not otherwise.

10 MR. KO: And your test -- your position is that
11 I cannot inquire into the compensation of any other
12 case than this case?

13 MR. HALLER: Yes.

14 MR. KO: Okay. That's a very narrow view of the
15 world.

16 BY MR. KO:

17 Q. Do you recall whether or not the
18 compensation you received from CRA in 2018 was over
19 \$500,000?

20 MR. HALLER: Same instruction.

21 BY THE WITNESS:

22 A. I -- I will on the advice of counsel not
23 answer that question.

24 BY MR. KO:

1 Q. Okay. Do you recall whether or not the
2 compensation you received from CRA in 2018 was over
3 \$2 million?

4 MR. HALLER: Same instruction.

5 BY THE WITNESS:

6 A. On the advice of counsel, I will not
7 answer that question.

8 BY MR. KO:

9 Q. Let's turn to your updated CV that you
10 provided to me and earlier this morning which was
11 separate and apart from the binder that you have in
12 front of you. It is reflected as Murphy Exhibit 5.

13 MR. HALLER: So what is this, the CV?

14 MR. KO: Yeah, I said the updated CV.

15 BY THE WITNESS:

16 A. Got it.

17 BY MR. KO:

18 Q. Now, with respect to the updated CV, I
19 want to turn your attention to Page 11.

20 A. Okay.

21 Q. So, so the record is clear, Page 11
22 through Page 20 of Exhibit 5 reflects the testimony,
23 reports and depositions you have provided over the
24 last four years, correct?

1 A. Yeah. It starts at the beginning of 2015.
2 So it's four -- well, roughly four-and-a-half years at
3 this point.

4 Q. And at one point in time I counted these
5 up, but I believe that there are about 90 entries, but
6 they cover about 50 engagements.

7 And you don't have to take my word for it,
8 but does that sound generally accurate as to the
9 amount of times you've been engaged as an expert
10 witness?

11 A. I -- I can't attest to any specifics of
12 that, but I think in general, it is a little higher
13 than I would have guessed, but it is not that far off.

14 Q. And with respect to all of the engagements
15 that you have set forth in Pages 11 through 20 of your
16 CV, what is the compensation that you recall receiving
17 for these cases?

18 MR. HALLER: Objection; no foundation.

19 BY THE WITNESS:

20 A. I don't have -- I don't really have a good
21 recollection of that.

22 BY MR. KO:

23 Q. Okay. When you said earlier or a moment
24 ago that you obtained \$1,400 an hour for your time and

1 you receive 100 percent of that compensation -- of
2 that rate, has that always been the case when you have
3 been a consultant for CRA?

4 A. Not that my rate has been 1400, but I have
5 received 100 percent of my rate, I believe, since I
6 started at CRA.

7 Q. Okay. And when you started at CRA, do you
8 recall what your hourly rate was?

9 A. I don't. It would have been definitely
10 lower than the 1400.

11 Q. Was it above a thousand?

12 A. It would have been probably somewhat above
13 a thousand.

14 Q. Do you recall whether or not it was 1200
15 an hour?

16 A. It may have been. It may have been 1100,
17 1200, it would have been in that range. I would
18 presume based on recollection, which as I noted
19 earlier for everybody, is not so great.

20 Q. So fair to say that since you started at
21 CRA through today you receive 100 percent of your
22 hourly rate from CRA, correct?

23 A. I believe that's correct, yes.

24 Q. Okay. And when you first started at CRA,

1 just so the record is clear, I believe you have
2 charged somewhere between 11 to \$1200 an hour and now
3 you charge \$1400 an hour for your work, correct?

4 A. I think that's roughly correct. I can't
5 specifically attest to those earlier figures. I know
6 the current figure is 1400 and I know it was lower
7 previously. Exactly what it was year-by-year I really
8 don't have a great recollection.

9 Q. And when you first started at CRA in
10 either 2000 or thir -- 2013 or 2014, do you have any
11 recollection of how much money you made from CRA that
12 year?

13 MR. HALLER: Just yes or no.

14 BY THE WITNESS:

15 A. No.

16 BY MR. KO:

17 Q. Do you have any recollection of how much
18 money you made from CRA in 2014?

19 MR. HALLER: Yes or no.

20 BY THE WITNESS:

21 A. No, I don't.

22 BY MR. KO:

23 Q. Do you have any recollection of how much
24 money you received from CRA in 2015?

1 MR. HALLER: Same instruction.

2 BY THE WITNESS:

3 A. I do not have a recollection of how much I
4 made, no.

5 BY MR. KO:

6 Q. Do you have any recollection of how much
7 money you received from CRA in 2016?

8 MR. HALLER: Same objection --

9 BY THE WITNESS:

10 A. I -- no, I --

11 MR. HALLER: -- instruction.

12 A. I do not have a recollection.

13 BY MR. KO:

14 Q. Do you have any understanding of how much
15 money you received from CRA in 2017?

16 MR. HALLER: Same instruction.

17 BY THE WITNESS:

18 A. Nothing specific and given the
19 instruction, I don't feel like I would speculate.

20 BY MR. KO:

21 Q. Do you have any understanding of how much
22 money you received from CRA in 2018?

23 MR. HALLER: Same instruction.

24 BY THE WITNESS:

1 A. No, I do not.

2 BY MR. KO:

3 Q. Do you have any understanding of how much
4 money you received from CRA up to the -- this point of
5 June of 2019 in this year?

6 MR. HALLER: Same instruction.

7 BY THE WITNESS:

8 A. I do not, not that I could rely upon, no.

9 BY MR. KO:

10 Q. Do you understand or are aware of how
11 frequently you get paid by CRA?

12 A. I get paid by CRA typically every week or
13 two based on billings that are collected during that
14 period of time.

15 Q. Okay. When was the last time you recall
16 being paid by CRA?

17 A. It would have been probably, oh, two weeks
18 ago.

19 Q. And do you recall how much that amount
20 was?

21 A. No. It gets direct deposited into my
22 account. So I get a notice that I received payment,
23 but I didn't look at it, what it was.

24 Q. And do you -- so for that particular

1 payment you didn't look at the amount.

2 Is that typical for all of the notices of
3 direct deposits you get from CRA?

4 A. Yeah, I don't -- I don't keep track
5 biweekly on -- on -- on what I get.

6 Q. So your testimony today is that you have
7 absolutely no understanding of how much money you've
8 received from CRA since you've been a consultant for
9 the last five years, correct?

10 A. That's not my testimony. I've -- as I
11 said before, I don't have a specific recollection that
12 I would be willing to rely upon as being accurate. I
13 haven't gone back to look, so.

14 Q. What's your general recollection?

15 MR. HALLER: Objection. He doesn't need to
16 answer that question.

17 I'll direct you not to answer it if
18 it's...

19 MR. KO: On what basis?

20 MR. HALLER: The same basis we discussed
21 earlier.

22 MR. KO: And can you clearly identify that basis
23 for me, David?

24 MR. HALLER: Yes. The Federal Rules permit you

1 to inquire into his compensation in this case and not
2 into his compensation for unrelated work.

3 MR. KO: And your testimony -- or your position
4 is that all of this other work is unrelated?

5 MR. HALLER: You haven't established that
6 anything is related. I don't think it's related.

7 BY MR. KO:

8 Q. Okay. My question for you, Dr. Murphy,
9 was: Do you have any general understanding of how
10 much money you've obtained from CRA since you've been
11 a consultant there?

12 MR. HALLER: Yes or no.

13 BY THE WITNESS:

14 A. Nothing specific, no.

15 BY MR. KO:

16 Q. Right. And I didn't ask specific, but I
17 asked whether or not you have a general understanding
18 of how much money you've obtained from CRA since
19 you've been a consultant there?

20 MR. HALLER: Just yes or no.

21 BY THE WITNESS:

22 A. I would have a general recollection, but
23 nothing that I would be willing to rely upon as being
24 accurate.

1 BY MR. KO:

2 Q. What is your general recollection?

3 MR. HALLER: I will instruct you not to answer
4 that question.

5 BY THE WITNESS:

6 A. I have been instructed not to answer that
7 question.

8 BY MR. KO:

9 Q. And you are going to follow that advice?

10 A. I will follow the advice of counsel, yes.

11 Q. How much money do you make as a professor
12 at Booth?

13 MR. HALLER: Same instruction. You don't need
14 to answer that question.

15 BY THE WITNESS:

16 A. I generally -- I mean, I don't know
17 specifically. I know generally what my salary is, but
18 I've been instructed that I shouldn't answer that
19 question.

20 BY MR. KO:

21 Q. And what's generally your salary?

22 A. I have been instructed that I should not
23 answer, so I'm not going to answer.

24 MR. KO: Well, I'm going to preserve this. It's

1 clear that Mr. Haller is creating some unjustifiable
2 objections about your compensation. So I'll note it
3 for the record and reserve my right to reopen this
4 deposition to ask you specific and general questions
5 about your compensation both received as a professor
6 and in connection with the prior testimony, reports
7 and depositions you've disclosed in your expert
8 report.

9 BY MR. KO:

10 Q. I am going to now turn your attention to
11 what will be marked as Murphy Exhibit 6, I believe.

12 MR. KO: Here you go, Juliana.

13 (WHEREUPON, a certain document was
14 marked Murphy Deposition Exhibit
15 No. 6, for identification, as of
16 06/06/2019.)

17 MR. KO: I just have one extra copy. This is
18 something that you provided, Bryant.

19 BY MR. KO:

20 Q. Juliana had handed you a copy of what's
21 been marked as Murphy Exhibit 6.

22 Does this look familiar to you?

23 A. It looks like a summary of hours and
24 billings for this matter through the end of May.

1 Q. And so does this look familiar to you?

2 A. I didn't -- I have not seen this exact
3 document. I -- but the general of what's there seems
4 generally familiar.

5 Q. Well, that's helpful. When you say you
6 haven't seen this exact document, I'd ask that you
7 actually turn and look through the entire exhibit that
8 I've handed you or that Juliana has handed you.

9 A. Okay.

10 Q. Do any of the documents that you just
11 looked through look familiar?

12 A. No, not that I -- I have not seen these
13 documents before.

14 Q. Okay. Now, going back to the first
15 page of this exhibit, and notwithstanding the fact
16 that you either have not seen this before or are not
17 familiar with it, there is an indication of your rate,
18 which we've talked about, which is \$1,400 an hour, and
19 then there is your consulting staff compensation rate
20 as well.

21 Do you see that?

22 A. Yeah. It is a rate range because there
23 are different rates for different people.

24 Q. Correct. Thank you for that

1 clarification.

2 That compensation rate range that's set
3 forth, is that the staff at CRA and -- and does the
4 rate range reflect the amounts that they are charging
5 in this case?

6 MR. HALLER: Objection; no foundation.

7 BY THE WITNESS:

8 A. That would be my understanding. I can't
9 specifically confirm that those are the numbers.

10 BY MR. KO:

11 Q. And with respect to the third item down
12 the list that sets forth "Murphy invoiced hours," do
13 you see that?

14 A. Yes.

15 Q. And there is the number next to it which
16 is 20.

17 Do you see that?

18 A. Yes.

19 Q. So as far as I understand, that would
20 reflect the amount of hours that you have informed CRA
21 that you have worked on in this matter who has then
22 subsequently put -- put it in some sort of bill.

23 Is that fair? Is that a fair
24 characterization?

1 A. I think those are the hours that are
2 billed already. That's what it means by "invoiced."
3 They have been actually recorded on an invoice as
4 opposed to actual hours that may have been worked but
5 not yet invoiced.

6 Q. In addition to those invoiced hours, I do
7 see a line item, six lines down that say: "Estimated
8 Murphy additional hours not yet invoiced through
9 May 31st, 2019."

10 Do you see that?

11 A. Yes.

12 Q. And there is a number there of 21,
13 correct?

14 A. That's correct.

15 Q. And so the total hours that you have spent
16 at least through May 31st, 2019, in this matter is
17 approximately 41 hours?

18 A. That would be the hours that I've
19 submitted bills for. Often I'll do brief work, you
20 know, have a phone call with somebody and I won't
21 always add that to my hours, but, you know, so I would
22 say probably it understates how many hours I actually
23 worked. I don't -- I don't always record my hours
24 which is kind of a fault of mine. I work on things,

1 think about them, and don't always write it down. But
2 these are the ones that I -- that I recorded.

3 Q. So with respect to the approximate
4 41 hours that you recorded and invoiced, when you --
5 let's start with the ones that you've already
6 invoiced.

7 Do you disclose to CRA not just the amount
8 of hours but the nature of the work involved?

9 A. I do not. I generally submit the number
10 of hours that I've worked on a matter. Again, as I
11 said, I don't always catch all of them, but the ones I
12 remember to keep track of I -- I inform CRA of how
13 many hours I had.

14 Q. So the amount -- so as I understand it,
15 you disclosed to CRA the total amount of hours that
16 you work in a particular litigation, including for
17 this one, correct?

18 MR. HALLER: Objection; vague.

19 BY THE WITNESS:

20 A. I do it matter-by-matter. So I will say
21 in this case I worked ten hours over some certain
22 period of time on this -- on a particular case and
23 that's the information I'll provide to CRA.

24 BY MR. KO:

1 Q. So in -- for purposes of this litigation,
2 did you ever provide CRA with a narrative with respect
3 to the hours that you've worked in this case?

4 A. I do not. And that's my general practice.

5 Q. With respect to the hours worked by
6 individuals at CRA, do you have any understanding of
7 whether or not there is a narrative associated with
8 their time?

9 A. My understanding is that at least in some
10 cases there is. I don't know if that's true in all
11 cases. I -- I, again, I'm a consultant. I think they
12 are all employees, and there is a somewhat different
13 process by which they submit their time and I submit
14 my time. But I'm not aware of it because I've never
15 been an employee.

16 Q. And do you have any understanding of what
17 the process is for this case?

18 A. Yeah, I don't know exactly what their
19 process is. I assume it's the same as it is for other
20 cases, but that's an assumption, not something I have
21 direct knowledge of.

22 Q. Have you ever reviewed in this case any of
23 the invoices that CRA staff or CRA employees have
24 submitted to counsel?

1 A. I do not.

2 Q. You do not or you -- you have not, just so
3 the record is --

4 A. I -- I have not and that's -- I generally
5 don't review bills that go out. That's not my area.
6 I'm not -- I'm not an employee of CRA, so I don't send
7 bills on behalf of CRA.

8 Q. Turn to Paragraph 7 of your expert report
9 which actually, conveniently, is also on Page 7.

10 A. Which one is that, Paragraph 7?

11 Q. Paragraph 7 on Page 7 of your expert
12 report.

13 A. Okay.

14 Q. In the second-to-last sentence of
15 Paragraph 7 you set forth your -- the hourly rate that
16 CRA charges for your -- your work which we've
17 established before you receive 100 percent of and you
18 also indicate that you receive other compensation from
19 CRA as well.

20 Did I read that correctly?

21 A. Yes.

22 Q. Can you describe to me what that other
23 compensation from CRA consists of?

24 A. Yeah, the -- the --

1 MR. HALLER: The nature of it.

2 BY THE WITNESS:

3 A. The nature of the compensation I receive
4 on matters such as this is I get compensated based on
5 some percentage of the staff billings, and that will
6 vary depending on which staff it is. So I get -- on
7 certain billings I will receive some percentage of
8 those billings.

9 BY MR. KO:

10 Q. Okay. Certain billings for a particular
11 engagement?

12 A. They are generally parceled out
13 engagement-by-engagement, but -- and the amount I
14 receive doesn't generally, in terms of the percentage,
15 doesn't generally vary in engagement-to-engagement,
16 but it will be different for different types of staff,
17 depending on where they -- you know, how they bill and
18 things like that.

19 Q. And what is -- you said a moment ago that
20 the term -- the terms -- or the percentage does not
21 generally vary from engagement to engagement.

22 What is the general percentage of the
23 billings that you receive or obtain?

24 A. Anywhere from zero to 20 percent I think

1 would be the highest, but zero would be -- anywhere
2 from zero to 20.

3 Q. And -- and other than who at CRA bills for
4 the time, are there any other factors that determine
5 or provide the basis for the percentage that you
6 receive in any particular matter?

7 A. Not that I'm aware of. I'm -- I'm pretty
8 sure it is just by individual, although -- I don't
9 want to misspoke -- speak, so there is some chance for
10 some individuals. It might depend on which role they
11 are playing, like if they are the leader on a case, it
12 might be different than if they are not, but I don't
13 think that's true. I think it actually is just by
14 individual.

15 Q. For the purposes of this litigation,
16 what's the percentage range that you will obtain based
17 on staff billing?

18 A. I would say it's that same zero to 20.

19 Q. Okay. And do you have an understanding of
20 what percentage of the billing you receive of Sean
21 Taylor's work?

22 A. I don't.

23 Q. Do you have an understanding of what
24 percentage of the billing that you receive from Jarrod

1 Welch's work?

2 A. I don't.

3 Q. Do you have an understanding of what
4 percentage of the billing you received from Daniel
5 Garcia Schwartz's billing?

6 A. I do not.

7 Q. Have you -- in addition to the amounts
8 that you have received from CRA directly regarding
9 your \$1,400 an hour rate, have you also received
10 compensation that reflects the percentage of the
11 billing of CRA staff in connection with this
12 litigation?

13 A. I don't think so, but I can't be
14 100 percent sure of that. That gets paid on a
15 quarterly basis, and I don't believe I've been paid
16 based on this case, but, again, because of the way
17 this works there is often a significant lag because
18 I -- I don't get paid by CRA until the bills are paid
19 to CRA and it has to come in between a particular time
20 in the quarter so that it's reflected in that
21 quarter's numbers, so I wouldn't assume it's been
22 paid, but I can't say for sure because it -- to me
23 it -- it doesn't come in except for once a quarter.

24 Q. So in addition to this percentage of the

1 billing structure and your hourly compensation, is
2 there any other compensation you receive from CRA?

3 A. I do also get, based on my contract, a
4 performance -- potentially get a performance payment
5 based on how much work I do over the entire contract.
6 But I won't know that for another three years or four
7 years whether I will earn a performance payment.

8 Q. And the contract that you are describing,
9 is that the contract -- the general agreement that you
10 have with CRA that we were describing or discussing
11 before?

12 A. Yes, it is. Yes, it is. It would -- it
13 would depend on how much work I end up doing for CRA
14 over that period of time.

15 Q. And do you know when -- or how that gets
16 triggered?

17 A. I don't recall. I knew at the time I
18 signed the contract, but it's -- it's based on
19 reaching a certain threshold of billings over the time
20 of the contract.

21 Q. In addition to your hourly rate, the
22 percentage of the billings and this potential premium
23 that we just discussed, are there any other forms of
24 compensation that you receive from CRA?

1 MR. HALLER: Objection; no foundation to the
2 word "premium," but you can answer.

3 BY THE WITNESS:

4 A. Could you restate this question?

5 BY MR. KO:

6 Q. So, you've indicated that you receive thus
7 far three general areas of compensation from CRA,
8 which consist of your hourly rate, a percentage of the
9 billing, and a certain term in the contract you have
10 with CRA that's based on reaching a certain threshold
11 of billings over the time of the contract.

12 Are there any other areas or categories of
13 compensation that you receive from CRA outside of
14 those three categories?

15 A. Also, when I signed on with CRA I get a
16 bonus that's prorated out over the duration of my
17 contract, assuming I continue to work for CRA over
18 that period of that contract.

19 Q. So if I understand correctly, you haven't
20 received that bonus yet?

21 A. I'm -- in -- in some of my earlier I
22 had -- this is my second contract with CRA, so I did
23 receive some of that in -- in my first contract
24 because I continued to work for CRA. So my -- my

1 understanding is it -- I will in the future collect
2 those payments based on that same idea.

3 Q. How long was the term of your first
4 contract with CRA?

5 A. It was actually five years, but I renewed
6 before the five years was up. So I renewed my
7 five-year contract, I think, roughly a year early. So
8 I renewed roughly after four years.

9 Q. It seems like CRA follows general
10 practices of NFL teams in re-upping a year before.

11 So you re-upped a year prior to being a
12 free agent?

13 A. Yes, I would have been a free agent and
14 I -- I would have been a free agent I think as of
15 May -- in May this year. So I re-upped roughly before
16 that. So I started -- I started my new contract about
17 a little earlier than I would have otherwise.

18 Q. And do you recall the amount of the bonus
19 that you received?

20 MR. HALLER: Yes or no.

21 BY THE WITNESS:

22 A. I -- I don't have a specific recollection.

23 BY MR. KO:

24 Q. When negotiating your second contract with

1 CRA -- well, first of all, the second contract that
2 you have, what's the term?

3 A. It's five years. So it's another -- it's
4 a five-year deal with CRA, as was my first deal.

5 Q. Did you negotiate any of the terms of that
6 deal or a contract?

7 A. Negotiate is kind of a strong word. I
8 didn't really. It was pretty much a rollover of the
9 contract that I had. Pretty much the terms stayed
10 about where they were. So I didn't -- I didn't
11 negotiate particularly hard.

12 Q. So other than the four categories of
13 compensation that we have discussed thus far that you
14 obtain from CRA, are there any other types of
15 compensation you received from Charles River
16 Associates?

17 A. No, nothing else that would be
18 compensation. I get reimbursed for expenses, but
19 that's not compensation.

20 Q. And with respect to the last category, the
21 bonus structure that is part of your second contract,
22 do you recall if that's similar or greater than the
23 amount that you negotiated for or discussed with CRA
24 for the first contract?

1 A. I think it's -- it's the same nominally
2 because there was this rollover and I didn't finish
3 the first contract, there -- it doesn't turn out to be
4 exactly the same number, but it's per -- it -- it
5 pretty much is just a rollover of the same deal, but
6 you have to take account of the fact that I didn't
7 finish the first deal, so that was kind of why it --
8 but it was essentially a rollover of the same terms.

9 Q. Is any part of it guaranteed?

10 A. No. I mean, if I stopped working, I
11 wouldn't collect it.

12 Q. Essentially you have to work the terms or
13 the duration of the contract in order to obtain the
14 bonus?

15 A. Yeah, I -- I don't recall the precise
16 language. It's -- you know, there is no specific
17 requirement that I work a certain number of hours, but
18 it's -- you know, I'm -- I'm expected to continue to
19 work with CRA and in my -- my normal pattern. You
20 guys are lawyers, you know how these things are
21 written more than I do, but I take it as, Kevin, keep
22 working and keep working like you have and that will
23 fulfill your end of the deal, and I'm happy with that.

24 Q. Now, we -- earlier this morning and,

1 actually, about an hour ago we were also talking about
2 Greg Bell.

3 Do you recall that?

4 A. Yes.

5 Q. And CRA is -- well, he is an employee at
6 CRA, but he has staff at CRA that support his expert
7 report as well, correct?

8 A. Yes.

9 Q. Are you aware of whether or not CRA is
10 assisting any other expert in this case?

11 A. None that I'm aware of, but I'm not aware
12 of everything that happens at CRA, so. I'm probably
13 the last person you should ask that of.

14 Q. What's your understanding of who or which
15 entity you and CRA have been retained by?

16 A. My understanding, it was the distributor
17 Defendants. Now, whether that includes every one of
18 them, I don't know. I know -- it doesn't -- it
19 wouldn't affect my analysis one way or the other. I
20 was going to do the analysis that I would do and it
21 doesn't matter whether it was for one distributor, all
22 of the distributors, none of the distributors. I
23 analyze it the way an economist like myself would
24 approach it, so. I -- I don't know specifically who

1 is listed on the retention letter.

2 Q. But it's your general understanding that
3 you and CRA have been retained by the distributor
4 Defendants in this case, correct?

5 A. That's my general understanding.

6 Q. Turning back to Paragraph 10 of your
7 report, which you are at -- well, I believe you are at
8 now, I just want to ask you about certain entities
9 that appear in Paragraph 10.

10 With respect to Cardinal Health, Inc.,
11 have you ever -- have you or CRA ever been retained as
12 an expert or consultant by Cardinal Health in the
13 past?

14 A. I can't --

15 MR. HALLER: Objection.

16 BY THE WITNESS:

17 A. I --

18 MR. HALLER: No foundation as to CRA.

19 BY THE WITNESS:

20 A. I cannot speak for CRA. I really don't
21 have a view into what CRA's contracting is because I'm
22 a consultant to CRA, so I don't really see their
23 broader contract, who they -- who they work for, I
24 don't -- I don't -- that I don't know.

1 I can speak for myself. I don't recall
2 specifically working for Cardinal. They may have been
3 involved in some multi-defendant litigation that I've
4 been involved in, but I don't recall doing specific
5 work for Cardinal.

6 BY MR. KO:

7 Q. Do you recall ever doing any expert or
8 consulting work for AmerisourceBergen?

9 A. Not -- not that I have, again, have a
10 specific recollection as they -- they -- I've been
11 involved in several matters that have multiple
12 defendants or multiple plaintiffs and whether they
13 were involved in those, I can't say for sure, but
14 there is nothing I can remember specific consulting
15 for them.

16 Q. Do you have any recollection of any
17 specific expert or consulting work you have done in
18 the past for CVS?

19 A. Again, I don't recall a specific project
20 for CVS, no.

21 Q. Have you ever done any expert or
22 consulting work for Walgreens?

23 A. Yes, I have. I've done some work for
24 Walgreens. I think the work I've done for Walgreens

1 is in the labor area. I've worked with them on -- on
2 some labor issues that they had. So I have worked as
3 a consultant for Walgreens previously.

4 Q. And was that in connection with a
5 litigation or were you providing consulting services?

6 A. Actually, I think both, but there was
7 litigation involved at least in part of it.

8 Q. And when was that?

9 A. Somewhere between five and ten years ago
10 would be my guess.

11 Q. And do you recall the frequency of your
12 involvement in terms of the both litigation and
13 consulting services you provided for Walgreens?

14 MR. HALLER: Objection; vague.

15 BY THE WITNESS:

16 A. I don't know. We probably worked for them
17 for about a year on a -- a set of matters related, as
18 I said, to labor issues that they had.

19 BY MR. KO:

20 Q. And when you said "we" a moment ago, who
21 are you including in "we"?

22 A. I would have been at Navigant, I believe,
23 at the time, so it would have been many of the same
24 people who are with me at CRA, but I was working

1 through Navigant at the time.

2 Q. And with respect to the labor issues that
3 you were providing services to Walgreens for, can you
4 describe specifically what those labor issues were?

5 A. The ones I recall, there may have been
6 more, but the one I recall was hiring and promotion of
7 managers for Walgreens' retail stores. So it was
8 their retail store managers.

9 Q. And is that the extent of which you were
10 providing litigation in -- or expert litigation and
11 consulting services to Walgreens for?

12 A. That's what I recall. There may have been
13 other things, but as far as I can recall, that was the
14 work I did for Walgreens.

15 Q. Do you recall performing any expert work
16 or providing consulting services for Walmart?

17 A. I mean, years ago I did some work
18 indirectly for Walmart, not through CRA or Navigant
19 actually, but that would have been ten plus years ago,
20 again, in the labor area.

21 Q. And what specifically did you do for
22 Walmark -- Walmart in terms of the labor -- labor
23 work?

24 A. I worked with a colleague of mine who is

1 Finis Welch and his consulting outfit, which was Welch
2 Associates, and I consulted with as a non-testifying
3 consultant.

4 MR. HALLER: Well, maybe, was this a
5 confidential engagement or is this -- or is this
6 something you could disclose if it was -- it wasn't
7 testimony in a court case?

8 THE WITNESS: It was not testimony -- I was not
9 a testifying expert. I just helped with some of the
10 statistical work and gave him -- talked to Finis about
11 some of the issues that were there in that case and...

12 MR. HALLER: I just don't know if you were bound
13 by a confidentiality agreement in that case or not.

14 THE WITNESS: I may have been. I don't know,
15 but I -- I don't think I have disclosed anything
16 that's beyond the -- what would be there, but I --
17 I -- I don't even recall much more work beyond that.
18 It was more just statistical consultant.

19 BY MR. KO:

20 Q. Other than this work that you said that
21 you indirectly provided to Walmart, have you done any
22 other expert or consulting work for them in the past?

23 A. Not that I recall.

24 Q. What about with respect to HBC Service

1 Company, have you ever provided any expert or
2 consulting work for them?

3 A. Again, not that I have a specific
4 recollection of.

5 Q. What about with respect to H.D. Smith,
6 have you provided any expert work or consulting --
7 expert or consulting work for them in the past?

8 A. Not that I -- again, that I have a
9 specific recollection of.

10 Q. In addition to providing these opinions
11 that you are setting forth on behalf of the
12 distributors and that you've been asked to provide by
13 counsel for distributors, do you or have you been
14 approached by any other Defendants in this litigation
15 to provide expert opinions on their behalf?

16 A. No, not that I recall.

17 Q. Are you currently involved in any
18 discussions with any other Defendants other than the
19 distributor Defendants to provide expert testimony on
20 their behalf?

21 A. In this case?

22 Q. Correct.

23 A. No, not that I recall regarding anything
24 in this case, no.

1 Q. Are you aware of opioid cases outside of
2 the MDL and the litigation that you have been retained
3 for here?

4 A. I have no specific knowledge of cases
5 outside of the work -- the case I'm working on.

6 Q. So in connection with the expert work you
7 are doing for this opioid litigation, is it fair to
8 say that this is the only expert work you are doing in
9 connection with any opioid-related case?

10 A. As far as I know, yes.

11 Q. You have not been engaged by any other
12 entity in any other matter outside of this opioid MDL
13 with respect to opioid lawsuits brought on behalf of
14 local governments --

15 A. Again, I don't --

16 Q. -- and state governments, correct?

17 A. -- I don't know what specifically is in
18 the engagement letter, but as far as I know, the
19 engagement that I know of is to work on this matter
20 specifically.

21 Q. And you have no other engagements with any
22 other counsel or entities involved in opioid
23 litigation outside of the one that you and CRA have
24 here, correct?

1 A. I don't think you can say that because
2 counsel that are involved here are involved in other
3 matters having nothing to do with opioids, so I might
4 have other litigation matters involving some of the
5 same firms that are in this litigation, but nothing in
6 other opioid-related matters, so...

7 Q. And that's what I was asking.

8 A. I know, but your question kind of didn't
9 say that.

10 Q. Fair enough.

11 Dr. Murphy, in addition to the work you do
12 for CRA and in connection with your role as a
13 professor and other current positions you list on your
14 CV, do you have any professional licenses or
15 certifications or accreditations?

16 A. Oh, do I have any professional licenses.
17 Not that I know of. I mean, I've got a Ph.D. in
18 economics and I'm a professor of economics, but I
19 don't think I have any official professional licenses
20 that I'm aware of.

21 Q. Are you a -- a member of any professional
22 organizations that you are aware of?

23 A. I think I'm a member of the American
24 Economics Association. I had to become a member when

1 I won the Clark medal. They wouldn't give it to me if
2 I didn't become a member, so I became a member at that
3 point.

4 Q. And that was in the late '90s?

5 A. I think that's right. It should have been
6 like '97 or something like that. I -- prior to that I
7 hadn't been a member of the American Economics
8 Association. They found that out and they thought
9 that wasn't good, so I became a member of the American
10 Economics Association.

11 I'm a member -- I'm an elected member of
12 the American Academy of Arts and Sciences. Those are
13 the ones I -- I recall that I'm a member.

14 Q. Other than the American Economics Asso --
15 well, are you still a current member of the America --
16 American Economics Association -- Economics
17 Association?

18 A. I don't know. I haven't kept track.
19 Probably, probably my membership I -- likely has
20 lapsed. I'm also -- I -- now that I think about it,
21 I'm -- I'm elected fellow of the Econometrics Society,
22 so. I think I had to join that society when I got
23 elected a fellow of that. So I joined that one, too.

24 Q. And when were you elected to the

1 Econometrics Society?

2 A. I don't know. Sometime in the '90s,
3 probably.

4 Q. Same question with respect to the American
5 Academy of Arts and Sciences, when did you become an
6 elected member of that?

7 A. Around the same time.

8 Q. A moment ago we talked about the expert
9 engagements that you've disclosed in connection with
10 your CV and that's reflected in Murphy Exhibit 5 that
11 we've been discussing.

12 Approximately how many more times have you
13 been engaged as an expert beyond what is disclosed in
14 that CV?

15 A. I wouldn't know. I -- I don't keep track
16 of those things.

17 Q. When was the first time you recall being
18 engaged as an expert?

19 A. Where I was specifically an expert witness
20 or a consulting expert?

21 Q. Either one.

22 When was the first time you recall
23 specifically being retained as either an expert or
24 consulting witness?

1 A. Well, I was a consulting -- I have been a
2 consulting expert probably running back to sometime in
3 the '80s, you know, sometime in the '80s. For a long
4 time I worked with Economic Analysis Corporation in
5 Los Angeles as a consulting non-testifying expert.
6 That was kind of my original consulting arrangement.
7 I believe the first time I was retained as a
8 testifying expert would have been in the Microsoft
9 antitrust trial where I was retained as an antitrust
10 expert in that trial. That would have been -- I think
11 that was my first testifying expert engagement.

12 Q. And was that -- I believe that was in the
13 late '90s, early 2000s.

14 Is that the general timeframe?

15 A. Your recollection is probably better than
16 mine. Around that time, I would guess. Post
17 Windows 98, I know that, so it would have been late
18 '90s.

19 Q. Since you were retained by Microsoft as an
20 expert in that antitrust litigation, would you say
21 that you've been regularly engaged as an expert
22 witness?

23 MR. HALLER: Objection; vague.

24 BY THE WITNESS:

1 A. I think it's varied over time, but, yeah,
2 I think in general that's -- over that time period
3 since then I've done expert witness work.

4 BY MR. KO:

5 Q. Is it fair to say that you've done a
6 substantial amount of expert work in the past
7 20 years?

8 MR. HALLER: Objection; vague.

9 BY THE WITNESS:

10 A. I mean, I think I -- I think that's one of
11 the things I've done is expert work in addition to my
12 work as a practicing economist and professor.

13 BY MR. KO:

14 Q. Can you provide me with a general
15 breakdown of how much of your professional time is
16 spent on expert work relative to your work as a
17 professional economist?

18 A. I would say, I'm trying to think what --
19 how much I do. It has varied over time. I would say
20 currently my work as a professional economist at the
21 university is by far the majority of my time. I spend
22 much less time on the consulting side.

23 Q. And has that changed over time?

24 A. It's varied. There were a couple of

1 years, for example, where I was on leave from the
2 university, so I didn't do as much university work and
3 I did more consulting work during that period of time.
4 These days I would say most of my work is at the
5 university, much more so than in consulting.

6 Q. When were you on leave from the
7 university?

8 A. I don't recall. Maybe five or six years
9 ago, something like that.

10 Q. And how long ago was the leave?

11 A. I took -- well, I never actually took a
12 full -- I officially took a leave, but I never
13 actually stopped teaching because I was teaching this
14 introductory Ph.D. class, so I kind of taught it for
15 free when I was, quote, on leave.

16 So -- and then the second year I taught
17 that and my Booth classes, even though offic- --
18 unofficially I was on leave that year as well. So if
19 you call a non-leave a leave, it was two years. It
20 probably amounted more to like a year-and-a-half given
21 that I still worked while I was on leave.

22 Q. And what was the reason for your non-leave
23 leave?

24 A. I was very busy with everything I was

1 doing and I teach a lot. I probably teach more than
2 just about any economist at -- at the university.
3 That was true then, it is still true today. So I
4 think I needed a little bit of a break from teaching
5 so many classes. So instead of teaching the number I
6 normally teach, I taught -- and the one year I taught
7 just one class and the next year I think I caught two
8 or two-and-a half classes.

9 Q. And during this generally two-year time
10 period where you taught less classes at the
11 university, you were still working as an expert in
12 various engagements?

13 A. I was working as an expert as well as I
14 was at the time, I believe this was around the time I
15 was also working as a consultant for the National
16 Basketball Players Association. So I was doing that
17 kind of bargaining and labor consulting that I was
18 doing directly with them.

19 Q. So in addition to the work you did for the
20 NBA and work you were doing as an expert, is there any
21 other areas of your professional career that you kind
22 of reduced during that time period?

23 MR. HALLER: Objection; misstates his testimony.
24 He said he did work for the union, not for the NBA.

1 MR. KO: That is a very fair clarification,
2 David.

3 BY MR. KO:

4 Q. I apologize for misspeaking, but I think
5 you get the gist of my question?

6 A. Yeah, I was going to correct you on that
7 one, though, because if the players ever found out
8 that I was working for the league, they would be
9 pretty upset.

10 No, I -- that -- that's major what I -- I
11 do other stuff. I mean, I have a woodworking business
12 that I also engage in, but it doesn't make any money,
13 so.

14 BY MR. KO:

15 Q. In your work with the N -- NBA -- PA, did
16 you get compensation?

17 A. I did. I act -- I think -- I believe I
18 actually did that work through Navigant when I was at
19 Navigant, so, but it was a very different kind of work
20 than I generally do in my consulting work, so.

21 Q. Putting aside consulting work, is it a
22 fair characterization to say with respect to the
23 expert work you have done over the past 20 years that
24 the expert work represents a substantial source of

1 income for you?

2 A. Well, it has varied over time. I have
3 done other things. I've -- you know, I had a currency
4 trading business I did for a while that provided a
5 substantial source of income. That's become tougher
6 to do these days. But -- so it's varied how important
7 consulting was relative to other things I did.

8 Q. With respect to the last five years, would
9 you characterize expert work as being a substantial
10 source of income for you?

11 A. I think it was a substantial source of
12 income. The university is also a substance source, so
13 I make money working in both capacities.

14 Q. Relative to the money that you make from
15 the university, is the money that you make as an
16 expert witness greater or less than the amount you
17 receive from Booth?

18 MR. HALLER: Objection, I think -- I think --
19 you know, I've let some general questions go past, but
20 I think you are drifting back into the territory where
21 I was instructing him not to answer. I -- I think his
22 compensation, again, not to repeat myself, in this
23 matter is discoverable, but now that we are comparing,
24 you know, whether he makes more money testifying or as

1 a professor, particularly when he says things have
2 varied over time, I think I'm going to instruct him
3 not to answer that question.

4 BY THE WITNESS:

5 A. I'm going to follow the advice of counsel.

6 BY MR. KO:

7 Q. With respect to 2018, do you recall
8 whether or not the amount you made as an expert
9 witness was greater or less than the amount you
10 received from Booth?

11 MR. HALLER: Same instruction.

12 BY THE WITNESS:

13 A. I don't -- I'm not paid by Booth. I'm --
14 I'm actually a professor at both Booth and the
15 economics department, as well as I have a courtesy
16 appointment in the law school. So I'm actually
17 paid -- I'm a university employee. I don't -- I
18 don't -- I'm not a specific Booth employee.

19 BY MR. KO:

20 Q. Thank you for that clarification.

21 So the entity that signs your paychecks is
22 the university itself, not particular -- a particular
23 school, correct?

24 A. Yeah, it is not just who signs my

1 paycheck. It is actually who I work for. I actually
2 have a joint appointment in economics and the Booth
3 School of Business, so I wouldn't be one -- most of
4 the people who work at Booth would be Booth
5 professors. I'm a Booth professor but also a
6 university professor. I am also a professor in the
7 economics department which is part of the social
8 science division.

9 Q. So in 2018 do you recall whether or not
10 the income you received as an expert was greater or
11 less than the money you received from the university?

12 MR. HALLER: Same objection -- same instruction.

13 BY THE WITNESS:

14 A. I'm -- based on the instruction of
15 counsel, I'm not going to answer.

16 MR. KO: It is a little bit past 1:00. I said
17 that we would probably break for lunch at this time.

18 Do you want to break for lunch?

19 THE WITNESS: That sounds fine to me.

20 MR. HALLER: Yep.

21 THE VIDEOGRAPHER: We are off the record at
22 1:01 p.m.

23 (WHEREUPON, a recess was had
24 from 1:01 to 1:48 p.m.)

1 (WHEREUPON, the witness left the
2 room.)

3 (WHEREUPON, a conference call was had
4 with Special Master Cohen, as
5 follows:)

6 MR. KO: All right. Special Master, we are at
7 the Kevin Murphy deposition today. He is one of the
8 expert witnesses for Defendants. And unfortunately we
9 couldn't come to agreement on an issue that has
10 been -- that has arisen with respect to questions
11 regarding Mr. Murphy's compensation.

12 And in particular, I have been asking the
13 witness questions about the amounts he has made as an
14 expert witness, including all of the engagements that
15 he has listed in his CV over the last four years,
16 which total about 50 or so engagements. And his
17 counsel, David Haller of Covington, is instructing him
18 not to answer.

19 In addition, his counsel is instructing
20 him not to answer any questions with respect to his
21 specific compensation that he makes as a professor
22 currently or historically and his counsel is
23 instructing him not to answer questions with respect
24 to any compensation outside ultimately of this

1 litigation.

2 My suggestion to Mr. Haller was that he
3 preserves his objection on the record, but that, of
4 course, Mr. Murphy should be able to respond to these
5 questions, but Mr. Haller has unfortunately drawn a
6 line in the sand and has said -- given clear
7 instructions not to -- for the witness not to answer
8 and Mr. Murphy has followed said instructions.

9 The one thing, additional thing I will
10 note is that Mr. Haller has made some suggestion how
11 he has never seen this type of questioning to be
12 answered in any previous litigation that he has been
13 involved in, and I would just note that in this
14 litigation, among others that I have been involved in,
15 these questions have been asked and answered of
16 defendants' expert witnesses.

17 So with that, I'm -- I'm happy to answer
18 further questions, but that's the general issue in a
19 nutshell.

20 MR. HALLER: So, Special Master Cohen, this is
21 David Haller of Covington & Burling.

22 Professor Murphy is a professor at the
23 University of Chicago, both in the Department of
24 Economics and in the Booth school and has been for

1 many years. He has also, you know, testified in a
2 variety of unrelated cases over the course of the last
3 30 years.

4 He has answered and we have provided, you
5 know, at -- at your direction we have provided a
6 statement of his compensation related to this matter,
7 we have provided all of the invoices for the
8 compensation being paid to him and to Charles River
9 Associates who is supporting him in this matter.
10 We've let all sorts of -- all questions regarding his
11 compensation in this matter, we've answered, the
12 witness has answered. And all questions relating to
13 the structure of his compensation and the sources of
14 it we've answered as well.

15 The -- the questions that we have
16 difficulty with are, for example: What was your
17 compensation from the Uni -- University of Chicago
18 this year, what was it last year, what was it the year
19 before last year, what was it the year before that,
20 which is, one, I think sensitive and personal; and,
21 two, not relevant; and, three, doesn't go to bias in
22 any potential way; and, four, is not within the scope
23 of what's permitted under Rule 26, which is, you know,
24 that -- that -- that there can be inquiry into the

1 compensation in this case.

2 So additionally, there has been questions,
3 you know: How much money did you make consulting in
4 unrelated cases in 2015, how much did you make in
5 consulting in unrelated cases in 2016, all of which,
6 again, is personal, sensitive information, doesn't go
7 to this case, doesn't relate to the compensation in
8 this case, and, therefore, can have no relationship
9 to, you know, whether or not the amount he is being
10 paid in this case is somehow biasing his testimony in
11 this case.

12 So for all of those reasons -- and
13 including the witness's discomfort and -- in -- in --
14 in disclosing what he views as personal and sensitive
15 information, he has not answered those questions at my
16 direction.

17 MR. KO: Special Master, I just want to quickly
18 address a couple of things, if you don't mind, that
19 Mr. Haller --

20 SPECIAL MASTER COHEN: Go ahead, just briefly.

21 MR. KO: Sure.

22 SPECIAL MASTER COHEN: Go ahead.

23 MR. KO: First of all, Mr. Haller's citation of
24 Rule 26 is completely incorrect. There is nothing in

1 that rule that suggests that this type of information
2 is precluded.

3 SPECIAL MASTER COHEN: Hello?

4 MR. KO: Oh, Special Master Cohen, can you hear
5 me?

6 SPECIAL MASTER COHEN: Yeah. I just lost you
7 for a second.

8 MR. KO: Okay. Let me just make sure I repeat
9 what I said, which is that Mr. Haller's
10 characterization of Rule 26 is wholly incorrect.
11 There is nothing in that rule that precludes this type
12 of information from being discoverable. Obviously the
13 only context in which income or compensation is raised
14 in that rule is with respect to whether or not
15 communications between counsel are discoverable
16 regarding compensation in a particular engagement. It
17 doesn't talk about the relevancy of any other
18 engagement.

19 But, more importantly, Mr. Haller's
20 suggestion that this does not have any relevance to
21 bias or otherwise is also incorrect. I mean, the
22 other expert witnesses have answered this question.
23 Mr. Haller is, I think, the sole attorney who is
24 taking this position. Certainly I don't want to speak

1 for everything, but -- everyone, but I believe that to
2 be the case. And, of course, Mr. Murphy's discomfort
3 is also no basis for which to not respond to this
4 question. Depositions are, of course, discomfoting
5 for many people.

6 SPECIAL MASTER COHEN: So here is -- here is
7 where I think we need -- here is where I think we need
8 to go.

9 Certainly any compensation that he is
10 being paid on this matter is -- is clearly relevant.
11 I think that any compensation that he has received in
12 other matters from the same defendants or even the
13 same industry is also relevant to show possible bias.
14 So, in other words, if the witness has received
15 compensation in other matters from Purdue or from
16 Cardinal or anybody else, then I -- then I think that
17 is relevant.

18 And it is -- it is decreasingly relevant,
19 but it is still relevant, you know, kind of imagining
20 it's in circles and there is, you know, right on the
21 center of relevance and then a little bit less
22 relevant and a little bit less relevant. I think
23 compensation that he has received from the university
24 is not relevant or -- or very barely relevant. The

1 only reason that I can imagine that that's relevant is
2 that, you know, if he receives a massive -- well, even
3 that I'm -- I'm stretching it. I just don't see that
4 as relevant at all from the university.

5 So what I think you should do is begin by
6 asking the extent to which the other matters that you
7 are inquiring about have anything to do with any of
8 the parties in this case, and if they don't, on either
9 side of the D, then it becomes questionable. If it is
10 also true that those matters don't even involve
11 pharma, then I think it becomes irrelevant.

12 So those are the lines that I would draw.
13 I assume that I don't need to be more specific and
14 that you can go forward with that, but if I'm wrong,
15 tell me now.

16 MR. KO: The one thing that I would just follow
17 up on, Special Master, is that I think you were
18 getting there with respect to the university
19 compensation, but the -- that's exactly the type of
20 question I was asking as a starting point in order to
21 inquire and understand what percentage of that income
22 or what that income is relative to his expert work in
23 order to get a general understanding of his overall
24 income. Those questions were specifically shut down

1 as well by Mr. Haller.

2 SPECIAL MASTER COHEN: Right. So I can
3 imagine -- I get where you are going, and, you know,
4 you don't need the level of detail that I think maybe
5 you were seeking to make your point. So once you've
6 gone through all of the other information, I think it
7 would be fair to ask your question along the lines of:
8 Is the expert compensation that you are being paid in
9 this case a substantial portion of your income.

10 MR. KO: And I asked that question and that was
11 shut down, too, or a variation thereto.

12 SPECIAL MASTER COHEN: Now, look, I am -- I am
13 largely agreeing with you, just not entirely. I'm
14 largely saying, yes, directions and witness
15 instructions not to answer were inappropriate. This
16 is -- you know, this territory is information that you
17 are allowed to elicit, but I'm not giving you carte
18 blanche.

19 MR. KO: Sure. As -- as one way forward -- and
20 I appreciate the guidance. As one way forward can
21 we -- and -- and I clearly understand the guidelines
22 that you are giving and I would like to explore
23 generally a few more questions in this area. Of
24 course, Mr. Haller has kind of shut it down initially.

1 I would suggest, so that we don't have to either call
2 you back again or -- or, you know, revisit this issue,
3 that Mr. Haller notes his objection for the record in
4 terms of what we've discussed here but, you know, have
5 Mr. Murphy, in fact, respond to the questions that
6 I'm -- I'm asking.

7 SPECIAL MASTER COHEN: Well, I think that is the
8 better course for a couple of reasons, and by the way
9 I -- I have a telecon at 3 o'clock, so I only have a
10 couple of more minutes here with you. We can get back
11 on the phone if necessary.

12 But, look, as a general matter,
13 instructions not to answer are inappropriate unless we
14 are talking about trade secrets or attorney privileged
15 information, none of which this is. And, of course,
16 the questions that you asked are -- if they
17 quote/unquote go over the lines, then what should
18 happen is a motion in limine to preclude that
19 information from being elicited at trial or relied
20 upon in any way, you know, for summary judgment or
21 anything else.

22 But still, my expectation is that you try
23 and adhere to those lines and don't test that with the
24 expect -- with the understanding that the expectation

1 is that most of them get answered. So...

2 MR. HALLER: Well, Special Master Cohen, this is
3 David Haller, and I'm -- I'm comfortable with your
4 direction, and I think, in fact, was willing to answer
5 questions along those lines. So, if there are
6 questions about, you know, amounts paid in matters for
7 same or similar defendants in the same industry, no
8 problem with that. If it relates to a case involving
9 pharma, no problem with that. No problem if it's --
10 you know, is most of the -- is your compensation for
11 this case a substantial portion of your income, no
12 problem with that.

13 But I understood, you know, that beyond
14 that it's -- there isn't relevance, that this is
15 highly sensitive personal information, that how much
16 the university pays him in absolute terms is just not
17 fair game. And so --

18 SPECIAL MASTER COHEN: I agree.

19 MR. HALLER: -- I think we'll --

20 SPECIAL MASTER COHEN: I agree with the latter,
21 but let me cut in. I really do have to get on this
22 other telecon. Here is what's going to happen. You
23 guys go forward. If you get stuck again, call me.

24 MR. HALLER: Okay.

1 SPECIAL MASTER COHEN: Okay.

2 MR. KO: All right.

3 SPECIAL MASTER COHEN: But I have to get on this
4 other call. I'm sorry.

5 MR. HALLER: Thank you.

6 MR. KO: Thank you.

7 SPECIAL MASTER COHEN: Thank you. Bye-bye.

8 MR. KO: Appreciate your time.

9 (WHEREUPON, the conference call with
10 Special Master Cohen concluded.)

11 MR. KO: We can go off the record.

12 (WHEREUPON, a recess was had
13 from 2:00 to 2:08 p.m.)

14 THE VIDEOGRAPHER: We are back on the record at
15 2:08 p.m.

16 BY MR. KO:

17 Q. Welcome back from lunch, Dr. Murphy.

18 During lunch or at least during the break
19 we had a call with the special master in this case to
20 resolve an issue regarding questions I had asked to
21 you about compensation you have received in other
22 expert work. Defense counsel were present and we
23 memorialized that discussion on the record. And so at
24 some point during this deposition I may revisit the

1 questions I have asked you regarding your
2 compensation. Okay?

3 A. Okay.

4 Q. During the most recent break, were you
5 given any instructions by counsel on how to respond to
6 this issue that we were -- that I just discussed?

7 MR. HALLER: I have two objections to that.

8 One is that I think pursuant to the case
9 management order, the court has indicated that
10 conversations that happen between counsel and a
11 witness during a break are privileged. And so I -- I
12 think that's not a permissible question.

13 MR. KO: I'm waiting for your second point.

14 MR. HALLER: The second point is I did show the
15 witness at least a small portion of the special
16 master's ruling or discussion on that question,
17 because I thought it might give the witness some
18 guidance. You were here just now when I was scrolling
19 through it a bit just so he could see that guidance.

20 MR. KO: So is your -- is that your
21 representation in terms of what you discussed with the
22 witness regarding the previous discussion with the
23 special master?

24 MR. HALLER: I am disclosing just for the record

1 that I have shown the witness a small portion of the
2 special master's statement on the record. And apart
3 from that, that discussions that happened during a
4 break are not permissible to be inquired into.
5 That -- that's not the normal practice that I normally
6 engage in, usually, but I think in this case that is
7 the rule, and so I should abide by that rule.

8 MR. KO: No. There were -- and to be clear, the
9 rule in the CMO in particular suggests that any
10 assumptions or facts or data that you discuss, on the
11 firsthand, with the expert are discoverable --
12 discoverable no matter where they occur.

13 But secondly, and more importantly,
14 obviously as you know for someone with as much
15 experience as you, coaching and -- and -- coaching the
16 witness is impermissible under any rule.

17 BY MR. KO:

18 Q. So I would like to know, Dr. Murphy,
19 whether or not you received any instructions on how to
20 respond to this issue by Mr. -- Mr. Haller during that
21 break?

22 MR. HALLER: Well, and I'll just reiterate two
23 things.

24 One, that you can, I agree, that you can

1 ask about whether there were any facts relayed to him
2 on which he is relying, no -- no question about that,
3 and -- but that's not your question.

4 And I'll note that, you know, when the
5 shoe was on the other foot and you were defending
6 Professor Cutler or Professor Gruber, I and the others
7 purposely did not ask any questions about what you
8 discussed with those witnesses during the break, not
9 because we thought it wasn't relevant, but because of
10 the -- of the prescriptions of the case management
11 order.

12 So on that point, I think the question, as
13 you posed it, is not permissible under the case
14 management order and I'll instruct the witness not to
15 answer.

16 MR. KO: Okay. And I wholly dispute that
17 instruction and I'll note for the record that the
18 grounds on which you're trying to preclude the witness
19 from answering this question are completely improper.
20 I preserve that. And -- and as you know, Mr. Haller,
21 you -- you know, this -- this has nothing to do with
22 the shoe being on the other foot. You just know that
23 you can't coach a witness. And so --

24 MR. HALLER: I never, ever do.

1 MR. KO: Okay. Well, I'll take that
2 representation --

3 MR. HALLER: Okay.

4 MR. KO: -- for now.

5 BY MR. KO:

6 Q. Thank you for bearing with that,
7 Mr. Murphy, or Dr. Murphy, as we do our attorney
8 thing.

9 Let's get back to Exhibit 5, which is your
10 updated CV. And I see that you have it in front of
11 you. And I want to go back to the previous expert
12 engagement set forth on Page 11.

13 With respect to the cases that you've
14 listed here, can you give me a general breakdown of
15 whether or not you are generally retained by
16 plaintiffs or defendants?

17 A. I would say the majority of the cases are
18 defendant cases.

19 Q. Okay. And do you have any general
20 breakdown of the times that you've been retained by a
21 defendant relative to the times you've been retained
22 as a -- by plaintiff?

23 A. I don't have a general breakdown.

24 Q. So when you say majority, are we talking

1 about the great majority, the vast majority? I mean,
2 I know majority can be 51 percent or greater. So I
3 just want a general understanding. Is it --

4 A. It was greater than 51 percent for sure,
5 but cert -- certainly not close to being exclusively
6 for defendants.

7 Q. Is it fair to say that three-quarters of
8 the time, generally speaking, you were retained by
9 defendants?

10 A. I would say probably three -- at least
11 three-quarters of the time it would be defendants.

12 Q. 80 percent of the time?

13 A. I -- I would guess, but now we are
14 getting -- now we are in a territory where I'm not
15 sure whether it's higher or lower. That's -- that's
16 probably as far as I can go on a -- and it has varied
17 over time and, really, in the types of matters from
18 one side to the other.

19 Q. So with respect to the engagements that
20 you set forth in Pages 11 through 20 of your CV, is it
21 fair to say that you've been engaged by defendants at
22 least 75 percent of the time?

23 A. I would think that's a fair
24 characterization, although I haven't gone back to

1 check it.

2 Q. And I have my own interpretation of,
3 generally speaking, the work that you've done in these
4 cases, but can you describe to me for what purposes
5 you've been retained by defendants?

6 MR. HALLER: Objection; compound.

7 BY THE WITNESS:

8 A. A wide range of cases, actually. A lot of
9 the work I do is in the antitrust area, so it would be
10 business practices of various types or unilateral
11 conduct-type cases. It could be merger cases, price
12 fixing cases. Those would probably be the majority of
13 the antitrust cases. I also do some patent work,
14 general tort liability-type cases. That would be
15 the -- that would -- that would cover most of -- also
16 I do some -- an occasional labor case, so it would be
17 hiring or promotion, cases like that.

18 BY MR. KO:

19 Q. And with respect to the expert opinions
20 that you are providing in these antitrust, patent,
21 tort liability and -- and labor cases, how would you
22 describe the general nature of the testimony that you
23 are providing?

24 MR. HALLER: Objection; compound.

1 BY THE WITNESS:

2 A. I think in all of the cases I am providing
3 economic testimony. So I -- I analyze the economic
4 aspects of the various issues using my expertise and
5 training as an economist and my experience using that,
6 using those skills to analyze problems.

7 BY MR. KO:

8 Q. And do your expert opinions generally
9 relate to damages at issue in those cases?

10 A. It varies. I do some damage cases, some
11 class certification cases, some liability cases.
12 Those would be probably the major ones. I also do
13 some regulatory type cases where it's about what
14 regulations should be adopted by, say, someone in the
15 railroad, regulating the railroad business, for
16 example.

17 Q. And do your expert opinions also relate to
18 causation issues that are at issue in those matters?

19 MR. HALLER: Same objection.

20 BY THE WITNESS:

21 A. Yes, I would say probably in both the
22 damage cases as well as the liability cases, issues
23 related to causation play a role.

24 BY MR. KO:

1 Q. And so we've established that at least
2 three-quarters of the time for the last four years
3 you're generally retained by defendants.

4 How would you characterize the types of
5 entities that you are retained by?

6 MR. HALLER: Objection; vague, compound.

7 BY THE WITNESS:

8 A. I think it varies a fair amount.
9 Sometimes it's associations or organizations. So, for
10 example, I've done a fair amount of work for ASCAP,
11 which is Association of Composers and -- and Music
12 Producers. As I said earlier, I work for the NBA
13 Players Association, which is another association.
14 I've worked for the Railroad Association on railroad
15 issues. Often it's a company or a group of companies
16 that I would work for. So I've done a fair amount of
17 work for Microsoft, Apple, Intel, people like that.
18 So, yeah, I would say mostly those would be the types
19 of entities.

20 Q. Okay. Is it fair to say that you have
21 been retained by Fortune 500 companies for a
22 substantial part of your career?

23 MR. HALLER: Same objection.

24 BY THE WITNESS:

1 A. I would say more often than not it would
2 have been -- would have been a -- a larger company.

3 BY MR. KO:

4 Q. And I know that we've generally discussed
5 some prior work you've done for some of the
6 distributor Defendants in this case.

7 Have you been retained in cases by
8 entities in the pharmaceutical industry?

9 A. I have.

10 Q. And approximately how many times?

11 A. I don't know the number, but probably five
12 or six of them probably is in the ballpark.

13 Q. And with respect to the five or six
14 engagements that you had in the pharmaceutical
15 industry, do you recall the amount of the compensation
16 you received in connection with that work?

17 A. Not specifically, no.

18 Q. Do you recall generally?

19 A. It's going to vary from case to case. I
20 wouldn't -- in terms of my own hours, it would be very
21 different on different cases. Some I worked a lot on,
22 some I worked very little on.

23 Q. Do you recall which case you worked the
24 most on in the pharmaceutical industry?

1 A. Probably the case I worked the most on was
2 a case where I worked for Biogen in a patent
3 litigation against other pharmaceutical firms.

4 Q. And do you recall the amount of your
5 compensation that you received in that case, in that
6 matter?

7 A. No. I -- I -- and I don't recall the
8 number of hours precisely, but it would have been a
9 couple hundred hours probably I worked on that total.

10 Q. And do you know what --

11 A. Maybe a hundred to 200 hours, something
12 like that.

13 Q. Okay. And when was that?

14 A. I could find it on here, because I --

15 Q. Was it within the last four years?

16 A. Yeah, it was.

17 Q. Okay.

18 A. It is on here somewhere. I'll -- I'll
19 find it.

20 Q. So if it was within the last four years,
21 it was at a rate of approximately between 12 to \$1,400
22 an hour?

23 A. Yeah, it was probably closer to the 1200
24 level because it was an -- it was a case that went to

1 trial that actually started quite a bit earlier, and
2 sometimes I keep my rate fixed even as we go forward
3 in a given engagement. I -- I think I did that in
4 that case.

5 Q. And in addition to the Biogen case, what
6 other cases do you recall being an expert for a
7 pharmaceutical -- or for an entity in the
8 pharmaceutical industry?

9 A. I -- I worked for Genentech in -- in a --
10 in a case for -- in a preliminary injunction case and,
11 again, in a patent matter.

12 Q. In addition to your work -- and do you
13 recall how much money you made in that case?

14 A. I don't.

15 Q. Do you recall how many hours you spent?

16 A. I don't recall. Less than a hundred I
17 would certainly say and probably less than 50, but I
18 don't know for sure.

19 Q. In addition to Biogen, the Biogen and
20 Genentech matters, what other engagements have you
21 been involved in in the pharmaceutical industry?

22 A. Those are the ones I remember recently.
23 Tho -- tho -- those are the ones that I recall.

24 Q. Okay. But -- well, those are the two

1 specific engagements you recall, but it is your
2 testimony, just to be clear, that you do recall being
3 engaged approximately five to six times by entities in
4 the pharmaceutical industry?

5 A. Yeah, although I'm not sure it was always
6 on pharmaceutical matters, so, like, I've done a fair
7 amount of work for Johnson & Johnson, but it was all
8 in their medical products work is the work I've done
9 in the past for them, so. I think they have
10 pharmaceutical business, but that wasn't the part of
11 the business I worked on.

12 Q. Sure.

13 And what -- can you describe to me the
14 work you did for Johnson & Johnson?

15 A. It was about contracting practices. It
16 was an antitrust case more than five years ago, and I
17 don't have many specifics beyond that. It was -- it
18 was -- it was about contracting.

19 Q. Contracting practices with respect to a
20 particular division at Johnson & Johnson?

21 A. Yeah. It was endoscopic and surgery --
22 and -- and sutures.

23 Q. Okay. In addition to Johnson & Johnson,
24 do you recall ever doing work for Purdue?

1 A. The chicken people?

2 Q. Are you aware of Purdue Pharma?

3 A. Not really.

4 Q. Okay. Are you a -- are you aware that
5 they are a manufacturer Defendant in this litigation?

6 A. I wasn't.

7 Q. Have you done any previous expert or
8 consulting work for Purdue Pharma?

9 A. Not that I recall. Nothing that comes to
10 my mind.

11 Q. Are you familiar with the entities
12 Mallinckrodt or SpecGX?

13 A. I have heard of them. I know some -- I
14 have some familiarity with them.

15 Q. Have you ever done any expert or
16 consulting work for Mallinckrodt or SpecGX in the
17 past?

18 A. I think I spoke to people at Mallinckrodt
19 before. I don't remember if I was retained or not.
20 I'm pretty sure I didn't write a report.

21 Q. And when you said you spoke to them, what
22 did you speak to them about?

23 A. I don't even remember the issue, if they
24 spoke to me about issues that they were dealing with,

1 I -- and I don't even remember if I was retained, but
2 I don't believe I got to the stage of even preparing a
3 report or anything.

4 Q. And what timeframe was that?

5 A. I didn't know. Somewhere in the last five
6 years.

7 Q. Do you recall whether or not any of the
8 issues involved Mallinckrodt or SpecGX manufacturing
9 of prescription opioids?

10 A. Not that I recall at all. I have no
11 recollection of that, so I believe that's not correct.

12 Q. Okay. Do you -- have you ever done any
13 expert or consulting work or been retained in any
14 fashion by the entity Teva?

15 A. You know, I think I did some work for Teva
16 years ago. Again, I don't have much specific
17 recollect of -- recollection of it, and I don't
18 remember whether we even -- I even filed a report in
19 that case, so.

20 Q. And are you aware that Teva manufacturers
21 prescription opioids?

22 A. I am, yes.

23 Q. Did any of your work in that matter
24 involve Teva's manufacturing of prescription opioids?

1 A. No, it did not.

2 Q. Are you familiar with the entity Endo?

3 A. I have heard of them but I'm not really
4 familiar with -- at all with what they do.

5 Q. Have you heard of the entity Par
6 Pharmaceuticals?

7 A. I'm not sure.

8 Q. Have you done any expert or consulting
9 work for Endo or Par in your career?

10 A. Not that I'm aware of.

11 Q. Have you done any expert or consulting
12 work on behalf of Insys, I-n-s-y-s?

13 A. Not that I'm aware of.

14 Q. Have you done any expert or consulting
15 work on behalf of Allergan?

16 A. Again, not that I'm aware of.

17 Q. Have you done any expert or consulting
18 work on behalf of Actavis?

19 A. I did work -- I -- but I think that was
20 all done not as an expert but as amicus brief that I
21 did on a matter involving Actavis. I think -- it's
22 related to the paper that's on there, so I don't
23 believe I was working in any retained capacity for
24 Actavis.

1 Q. And that was an amicus brief to the
2 Supreme Court, correct?

3 A. I believe that's correct, yes.

4 Q. With respect to the generic drug issues?

5 A. Yes, that's what I recall.

6 Q. Other than that amicus brief that I
7 believe you co-signed with other economists, correct,
8 or is it -- was it simply your own?

9 A. No. It was, like, five of us, I think,
10 were on that, so. It was -- it was -- it was a group
11 of economists who were on that, which is pretty
12 typical for amicus briefs.

13 Q. So other than the amicus brief that you
14 co-signed with other economists, have you done any
15 other expert work or consulting work for Ac- --
16 Actavis?

17 A. Yeah, I should say I don't think that was
18 technically for Actavis, it involved Actavis, Actavis
19 or whatever -- however you say that word. But -- so
20 I -- I would say I wasn't retained by them. It
21 involved a case they were involved in. They are
22 actually in the title of the paper we talked about
23 earlier. But I don't believe I've worked for them on
24 a consulting basis.

1 Q. Are you familiar with the entity Watson
2 Pharmaceuticals?

3 A. I am not.

4 Q. So I take it you've not -- you don't
5 recall or you have not ever been retained as an expert
6 or a consultant by Watson, correct?

7 A. To the best of my recollection, no.

8 Q. Dr. Murphy, I know that we've talked
9 before about Greg Bell who has submitted an expert
10 report on behalf of the Defendants in this case.

11 Are you aware of any of the other defense
12 experts in this matter?

13 MR. HALLER: Objection; asked and answered.

14 BY THE WITNESS:

15 A. Not particularly, no.

16 BY MR. KO:

17 Q. Have you had any discussions with any of
18 the defense experts in this matter about this
19 litigation?

20 A. The only person I had discussions with was
21 Greg Bell. That's the only other expert I recall
22 having any discussions with. And those were of two
23 types. I had a discussion early on where he contacted
24 me about the interest in people in talking to me and

1 he was also a joint participant in the communications
2 with counsel that I talked about before.

3 Q. So, just so I understand clearly, other
4 than Greg Bell, is it your testimony that you have not
5 spoken with any other defense expert about this
6 litigation?

7 A. Not that I recall.

8 Q. And after you had that initial
9 conversation with Greg Bell, I presume at some point,
10 as we discussed earlier, you began having some
11 discussions with counsel, correct?

12 A. That's correct.

13 Q. And who was the first counsel you recall
14 discussing this matter with?

15 A. I -- I believe David Haller would have
16 been the first person, but I don't know for sure.

17 Q. Okay. In addition to David Haller and
18 lawyers at Covington, do you recall having discussions
19 with any other counsel, either at Covington or at
20 other firms about this litigation?

21 A. I know that --

22 MR. HALLER: Asked and answered.

23 BY THE WITNESS:

24 A. I know there were other people on some of

1 the calls and at some of the meetings, but I couldn't
2 tell you who was there.

3 BY MR. KO:

4 Q. And I think you had said before that there
5 was an in-person meeting that you attended here in
6 Chicago, correct?

7 A. That's correct.

8 Q. And at that in-person meeting I assume
9 that Mr. Haller was present, correct?

10 A. Yes, he was present.

11 Q. And do you recall the identities of any
12 other counsel beyond Mr. Haller who were present at
13 that meeting?

14 A. I don't.

15 Q. Do you recall how many people were at that
16 meeting?

17 A. I don't know. Probably a dozen, maybe a
18 little more.

19 Q. And out of the approximately dozen people,
20 they consisted of counsel and/or CRA employees, is
21 that accurate?

22 A. I don't remember who else was there. I
23 know we had myself and Jarrod Welch and -- and Sean
24 Taylor from CRA. I don't recall if there was anyone

1 else from CRA there, and I know there was counsel
2 there. I don't recall who else was there beyond that.

3 Q. Other than this in-person meeting that you
4 had with Mr. Haller and others at CRA and other people
5 that you don't recall, do you -- did you have any
6 other in-person meetings with counsel since the
7 beginning of your engagement in this matter?

8 MR. HALLER: And including yesterday or not
9 including yesterday?

10 BY THE WITNESS:

11 A. Yeah, I would say yesterday there was one.
12 I think I mentioned that already, but I think those
13 were the only two.

14 BY MR. KO:

15 Q. Okay. So outside --

16 A. As far as I recall. There may have been
17 others, but those are the two I recall.

18 Q. And your best recollection is that you
19 were retained in this matter in February -- January or
20 February of 2019?

21 A. I couldn't say whether it was January or
22 February, but I would have -- that timeframe sometime.

23 Q. Okay. Have you done any work for
24 Covington in the past?

1 A. Yes, I have.

2 Q. Okay. And can you describe what work you
3 have done either for them or on their behalf in the
4 past?

5 A. Well, I -- I -- matters that they were the
6 counsel on is kind of the way to think about it.
7 Probably the -- I've done some of the railroad work I
8 did for people who were at Covington. That's the one
9 I recall specifically Covington was involved in. I'm
10 sure they have been involved in other matters I have
11 worked on, but that's the one that comes most directly
12 to my mind. Some of the railroad work I have done is
13 with people at Covington.

14 Q. Have you ever worked with Mr. Haller
15 before in the past?

16 A. I don't think so, but he might know better
17 than I.

18 Q. Are you familiar with the firm
19 Kirkland & Ellis?

20 A. I am familiar with the firm
21 Kirkland & Ellis.

22 Q. Have you done any work on matters in which
23 Kirkland & Ellis were counsel?

24 A. Yes, I have done work for

1 Kirkland & Ellis.

2 Q. In approximately how many times?

3 A. Oh, probably five or -- at least five or
4 six. I -- I have to go back over the years, but,
5 yeah, I've done a fair amount of work with
6 Kirkland & Ellis.

7 Q. Okay. And in what type of cases did you
8 work with Kirkland & Ellis on?

9 A. I worked on antitrust cases for sure, I've
10 worked on a labor case with Kirkland & Ellis involving
11 Allstate Insurance, I've worked on a patent -- I mean,
12 I'm sorry -- a bankruptcy case with Kirkland & Ellis
13 regarding a bankruptcy matters. Those would be the
14 types of matters I recall working on with
15 Kirkland & Ellis.

16 Q. Are you familiar with a firm Arnold &
17 Porter?

18 A. Yes, I am.

19 Q. Have you done any work for Arnold & Porter
20 in which they were counsel on matters you were engaged
21 in?

22 A. Arnold & Porter has been a counsel on
23 matters that I've been involved in in the past, yes.

24 Q. Approximately how many times?

1 A. I really can't give you an accurate
2 figure.

3 Q. Is it more than one occasion?

4 A. More than one occasion. Typically as part
5 of a joint defense group. So they would have been one
6 of several law firms involved, typically.

7 Q. Okay. Do you have any recollection of
8 approximately how many times they were an entity that
9 was part of that joint defense agreement?

10 A. I don't. I really couldn't give you an
11 accurate figure.

12 Q. And what types of cases were these?

13 A. I -- it is my recollection they would be
14 antitrust cases.

15 Q. Okay. Have you ever worked for the law
16 firm Holland & Knight in a matter that you were an
17 expert on?

18 A. Not that I specifically recall. I may
19 have, but not that I have specific recollection of.

20 Q. I believe there is counsel from O' --
21 O'Melveny here. Have you ever worked with O'Melveny
22 in the past?

23 A. I have worked with -- with O'Melveny in
24 the past.

1 Q. Approximately how many times?

2 A. I don't know.

3 Q. More than one?

4 A. More than one, sure.

5 Q. More than five?

6 A. Probably around five, but, again, that's a
7 very, very rough estimate.

8 Q. And what types of cases have you worked
9 with O'Melveny on?

10 A. I would say pretty much antitrust cases is
11 where I've tended to be involved with O'Melveny.

12 Q. Have you ever worked for counsel from
13 Ropes & Gray?

14 A. I have.

15 Q. Approximately --

16 A. At least the name sounds familiar. I
17 don't know how many times.

18 Q. At least once?

19 A. I would say at least once.

20 Q. At least five times?

21 A. I don't think so, no.

22 Q. Okay. And do you know -- do you recall
23 the general nature of the cases that you worked with
24 them on?

1 A. I do not.

2 Q. Are you familiar with the law firm
3 Dechert?

4 A. Yes.

5 Q. Have you worked with Dechert on any matter
6 in which you were an expert on?

7 A. I don't recall specifically. I probably
8 have, but I don't recall any specific matters where
9 that's the case.

10 Q. Do you recall how many times that you have
11 been involved in a case in which Dechert has also been
12 involved?

13 MR. HALLER: No foundation.

14 BY THE WITNESS:

15 A. That's impossible given I can't recall.

16 BY MR. KO:

17 Q. That's true. That's true. My question
18 was -- was not good. It was not what I was intending
19 to ask.

20 Do you recall how many times you have been
21 involved in a case with Dechert in which you were also
22 an expert for which they were counsel in a matter that
23 you were involved in as an expert?

24 A. I do not recall how many.

1 Q. Okay. Have you ever worked with the law
2 firm Mor -- Morgan Lewis?

3 A. Yes, I have.

4 Q. Have you ever been engaged -- well, have
5 you ever worked with them in a matter in which you
6 were also engaged in as an expert?

7 A. Yes, I have.

8 Q. Approximately how many times?

9 A. I don't know for sure. Probably three or
10 four times, something in that range.

11 Q. And were these also antitrust cases?

12 A. No. I was involved with them on a labor
13 case and also antitrust.

14 Q. Have you ever been -- or do you know the
15 law firm Reed Smith?

16 A. I do. I've heard of them.

17 Q. Have you worked with them in any matter
18 that you were an expert on?

19 A. I don't know. They may have been involved
20 in one of the multi-defendant cases I've been
21 involved, but I don't have any specific recollection.

22 Q. Have you ever worked with the law firm
23 Williams & Connolly?

24 A. Yes, I have.

1 Q. Approximately how many times?

2 A. I don't know.

3 Q. Three times at least?

4 A. I couldn't say.

5 Q. Antitrust matters or other types of cases?

6 A. I would assume antitrust, but, again, I
7 can't say for sure.

8 Q. Have you worked with the law firm
9 Zuckerman Spaeder before?

10 A. Probably, but I don't have any specific
11 recollection. The name sounds familiar which makes me
12 think I have, they have been involved in something I
13 have been involved in, but...

14 Q. Do you recall what type of case that you
15 were involved in with them?

16 A. No. And if I don't recall for sure
17 whether I did, it's hard to know what type.

18 Q. Have you ever worked with the firm Locke
19 Lord?

20 A. I don't know.

21 Q. Have you ever worked with the firm Bartlit
22 Beck, I think they are based here out of Chicago?

23 A. Yes, I have worked for Bartlit Beck --
24 with Bartlit Beck.

1 Q. Approximately how many times?

2 A. Oh, probably five or six times roughly.

3 And, again, that's very roughly.

4 Q. What types of cases?

5 A. Antitrust I would say, generally.

6 Q. Have you worked with the law firm

7 Barnes & Thornburg?

8 A. The name does not sound familiar, so I

9 don't know.

10 Q. Have you worked with a law firm Cavitch,

11 Familo & Durkin?

12 A. Again, I -- name doesn't sound familiar to

13 me.

14 Q. Have you worked with the law firm Bingham

15 Greenebaum & Doll -- or Doll?

16 A. The Bingham part sounds familiar. I don't

17 know if that's the Bingham I'm thinking of, but I've

18 certainly come across the Bingham name before.

19 Q. And what types of cases?

20 A. I wouldn't have that recollection.

21 Q. Are you aware of any work that -- let's

22 start with the previous five years in which you've

23 been associated with CRA, have you -- are you aware of

24 any work that CRA has done on behalf of any of the

1 Defendants in this litigation in the past?

2 A. Off the top of my head, no. Not that --
3 not that I can put the two pieces together off of the
4 top of my head.

5 Q. So are you aware of any consulting work
6 that CRA has done on behalf of Purdue?

7 A. Not, no, I have no direct knowledge of any
8 of that.

9 Q. Are you aware of any consulting work that
10 CRA has done on behalf of Janssen or Johnson &
11 Johnson?

12 A. Well, I've done work for Johnson &
13 Johnson, but I'm not aware of work beyond the work
14 that I've done.

15 Q. And that work that you've done for
16 Johnson & Johnson, did you do it in connection with
17 anybody at CRA?

18 A. I did it through -- I -- well, the
19 original work I did, which I spoke about earlier,
20 which was on endoscopic and surgical items, was done,
21 I believe, originally at Chicago Partners and then
22 carried over to Navigant, that sounds right to me,
23 that gives you an idea of how long ago it was.

24 I've also done some other work over time

1 for Johnson & Johnson. I have some current work I'm
2 doing with Johnson & Johnson, but I don't even know if
3 I can disclose that, so. All right. Certainly
4 nothing I've been -- I don't even think I've been
5 declared as an expert in those matters.

6 Q. So, setting aside the current work, when
7 you said a moment ago that you've done some other work
8 over time for Johnson & Johnson other than the
9 endoscopic work, what is the general nature of the
10 work you've provided to Johnson & Johnson?

11 MR. MURPHY: And I'll just object and ask the
12 witness to keep in mind any confidentiality agreements
13 that he has with Johnson & Johnson.

14 BY THE WITNESS:

15 A. Yeah, I don't know the specifics of any
16 con -- any confidentiality agreements. I don't think
17 there is other ones that I recall that I have filed
18 any reports in. So I've consulted with them on
19 various matters over that time.

20 BY MR. KO:

21 Q. Are you aware of any consulting work that
22 CRA has provided for Teva?

23 A. No, not that I'm aware of.

24 Q. Are you aware of any con -- consulting

1 work that CRA has provided for Mallinckrodt?

2 A. Nothing that I recall, no.

3 Q. Earlier today we were talking somewhat at
4 length about your compensation and your counsel
5 instructed you not to answer certain questions.

6 Let me try and ask what I think will be a
7 slightly different question that I believe you should
8 answer to. Obviously Mr. Haller might think
9 otherwise.

10 I understand that you're not willing to
11 disclose the amount -- the absolute amount that you've
12 made as a professor, but relative to the amounts that
13 you've made as a professor, how would you describe the
14 amounts that you've made as an expert witness?

15 MR. HALLER: Well, let me just object. What was
16 cleared, I think, with the special master is that you
17 could ask a question as to whether the compensation he
18 is receiving in this case is a substantial portion of
19 his total compensation from all sources, and that I
20 think would be a fair question, but that's not the one
21 you are asking here.

22 MR. KO: Well, that's not what he said, but let
23 me just ask my question.

24 BY MR. KO:

1 Q. How would you describe the general nature
2 of your expert witness compensation that you've
3 received relative to your compensation as a professor?

4 MR. HALLER: And I'll instruct you not to answer
5 that question, but you can ask the one that the
6 special master did articulate and which I showed to
7 Professor Murphy before this started. It was -- it
8 was very clear what he said he would permit on that.
9 And you don't have to ask the permitted question. I
10 suppose you could just pass it by, but that is a
11 permitted question.

12 MR. KO: Okay. You can note your objection and
13 that's about it. I -- I don't know what -- I
14 completely disagree with -- with what you believe the
15 special master permitted or not.

16 So let me ask -- let me --

17 MR. HALLER: That's why we put it on the record.

18 MR. KO: Hold on. Let me ask you once again.

19 BY MR. KO:

20 Q. How would you describe the general nature
21 of your expert witness compensation that you received
22 relative to your compensation as a professor?

23 MR. HALLER: Objection; vague, no timeframe, and
24 not relevant if it doesn't relate to compensation in

1 this case. And so unless you want to answer the
2 question, but I -- I think you are permitted to not
3 answer it.

4 BY THE WITNESS:

5 A. I believe I had a previous instruction
6 just a few minutes ago not to answer that question and
7 I'm going to heed that recommendation.

8 BY MR. KO:

9 Q. Well, actually, in -- in that soliloquy by
10 your counsel he did not actually instruct you to
11 answer. He has lodged his objection which he was
12 instructed by the special master to do and note it for
13 the record. But I'd ask that you actually answer my
14 question. So let me try one more time.

15 How would you describe the general nature
16 of your expert witness compensation that you have
17 received relative to your compensation as a professor?

18 A. I -- I would ask to reread the record
19 because I think in a previous statement before that
20 one he did instruct me not to answer, but I would like
21 the record --

22 MR. HALLER: Well, given your view that -- which
23 I agree with that that's not relevant and it is
24 sensitive and personal information, I'll instruct the

1 witness not to answer that question. And I don't know
2 why you are bypassing a permitted questions in order
3 to jump to that one except to be, you know, to --
4 to -- to -- cause a problem when there isn't one. So
5 the special master has outlined a clear path for you
6 and I think if you don't want to follow it, that's
7 fine, but then you're -- once you stray outside the
8 path then we are going to end up with objections.

9 MR. KO: I just want to get a clean record here
10 and prevent the multiple soliloquies where counsel --
11 let me ask once again, and Mr. Haller, you can just
12 object your -- or note your objection for the record.

13 BY MR. KO:

14 Q. Dr. Murphy, how would you describe the
15 general compensation that you've received as an expert
16 witness relative to the compensation you receive as a
17 professor?

18 A. I'm going to follow the instructions of my
19 counsel, which has now been given twice, and -- and
20 not answer the question.

21 Q. Thank you.

22 I want to turn back to your expert report
23 and actually Appendix B which we've created a separate
24 exhibit for. So let me hand you a copy of what will

1 be marked as Murphy Exhibit 7, I believe.

2 (WHEREUPON, a certain document was
3 marked Murphy Deposition Exhibit
4 No. 7, for identification, as of
5 06/06/2019.)

6 BY MR. KO:

7 Q. For the record, Murphy Exhibit 7 is
8 Appendix B that's contained in your expert report that
9 was reflected in Exhibit 2 of today's deposition.

10 Does this accurately ref -- reflect the
11 list of materials you relied upon in preparing the
12 expert report you are providing in this case?

13 A. To the best of my knowledge, it does.

14 Q. And you've identified documents, sources
15 and data here that you rely upon, correct?

16 A. Yes.

17 MR. HALLER: I'll just note for the record that
18 this list does not include the two documents that we
19 brought to the deposition today.

20 BY MR. KO:

21 Q. So, Dr. Murphy, does this Exhibit 7
22 accurately reflect the list of materials that you
23 relied upon in preparing your report in addition to
24 the two documents that you pro -- provided to me this

1 morning?

2 A. I believe, as long as this is the copy of
3 my Appendix B, to the best of my knowledge, that was a
4 list of the materials I relied upon.

5 Q. And what is your definition of "relied
6 upon"?

7 A. Well, I think it would include materials
8 that form the basis -- that I use as a basis for my
9 opinions. So anything that's a basis of my opinion
10 would be included in the materials relied upon.
11 Anything that -- other things might be on the list of
12 materials if they were things that were part of the
13 process by which I put my report together and formed
14 my opinions even if ultimately I didn't rely upon them
15 for the report itself.

16 Q. So, just so I understand correctly. There
17 were obviously more documents that you have reviewed
18 outside of this Appendix B, but I just want to make
19 sure I understand your testimony.

20 You're saying that those documents did not
21 necessarily inform the opinions that you are
22 providing, is that fair to say?

23 A. I think that's -- I -- I try in general
24 when it comes to materials relied upon to definitely

1 include things that I specifically rely on that form a
2 basis for my opinion and -- and include things that
3 were part of that process. There may be other things
4 I saw, that I looked at. If they don't really inform
5 my opinions, they are not something I could typically
6 list in the list of materials relied upon.

7 Q. Regarding the academic sources that you
8 list here, did you review all of these academic
9 sources?

10 A. I would say I probably reviewed most of
11 them in some part or another. Many of -- many of
12 them, more economics ones I was very familiar with
13 prior to working on this case because it's -- you
14 know, but certainly when it comes to the labor market
15 side of things, there are areas that I do my research
16 in all of the time, so. Others I would have looked at
17 partially or, you know, in some form or discussed at
18 least with my staff.

19 Q. Did CRA review any of these academic
20 sources?

21 A. I would say somebody at CRA probably
22 reviewed virtually all of them in addition to myself.

23 Q. And do you know which individuals were
24 responsible for reviewing these academic sources at

1 CRA?

2 A. In general, the people would be the three
3 people I talked about before would be the people who
4 would be looking at the academic literature on these
5 things.

6 Q. Can you provide an approximate breakdown
7 of which documents that appear here you've reviewed in
8 part?

9 A. I probably can't. I can tell you -- the
10 ones I can distinctly remember off the top of my head.
11 Certainly the -- the Are -- Autor arg -- articles I
12 remember. These other ones, Birnbaum, I think I
13 remember looking at those. The Case and -- and Deaton
14 articles. The Kofi article, Chetty article. I
15 don't -- the other one is the Cicero and -- Ciccarone,
16 I -- I -- I know I've looked at some of those. I
17 don't know which ones. The Janet Currie article
18 obviously I remember. And the Jones article I
19 remember. Some of these other ones I'm sure I looked
20 at. Obviously the John Murphy and Topel articles I
21 remember. The Karabarbounis and -- and Nei -- Neiman
22 article I remember, Katz and Murphy I remember, the
23 Krueger articles I remember, Moretti, the Murphy
24 article I remember, Newhouse, the Pierce and Schott

1 article I remember, the Ruhm article, the Singer
2 article, Solow. Those are the ones I remember.

3 Q. So I just want to make sure I understand
4 your testimony.

5 Are those all -- the ones you just cited,
6 are those articles that you reviewed in their entirety
7 or at least some portion?

8 A. I would say the vast majority of those I
9 reviewed -- I've reviewed in my entirety, not
10 necessarily as part of my case. A lot of ones I was
11 familiar with before I started working on this case.

12 (WHEREUPON, there was a short
13 interruption.)

14 BY MR. KO:

15 Q. With respect to the Bates numbered
16 documents that you --

17 (WHEREUPON, there was a short
18 interruption.)

19 BY MR. KO:

20 Q. So with respect to the documents that
21 appear on Page B-3 of Appendix B, and in particular
22 the Bates numbered documents, are those all documents
23 that you've reviewed as well?

24 A. I don't know the Bates numbers, so it

1 would be hard for me to go through those documents
2 by -- based on Bates numberings. I -- I couldn't tell
3 you.

4 Q. Fair enough.

5 Did you review all of the documents that
6 appear in this section of your report?

7 A. I do not believe I did, but I would have
8 reviewed some of them, I would assume.

9 Q. And I'll represent to you that the
10 documents that appear here at least with the initial
11 acronym ODH are from the Ohio Department of Health.

12 Do you recall reviewing documents from the
13 Ohio Department of Health?

14 A. I know we -- I know we've discussed some
15 of those, but I don't know if I specifically looked at
16 them or just talked to people about them.

17 Q. Is there any particular reason why you
18 selected those documents?

19 A. Not without looking at them.

20 Q. Were these documents provided to you?

21 A. I believe we had access to a large number
22 of documents, so we would have gotten them through the
23 channels from the production in the case.

24 Q. And when you say "we," are you talking,

1 once again, to be clear, about you and individuals at
2 CRA that were helping you?

3 A. They would come through CRA because CRA
4 would handle all things like communication of
5 documents and things like that.

6 Q. Did you ever ask counsel or CRA to look at
7 specific documents that were produced in this
8 litigation?

9 MR. HALLER: Objection; vague.

10 BY THE WITNESS:

11 A. I know when it came to academic articles I
12 definitely asked people at CRA to look at particular
13 academic articles or areas of academic articles.

14 In terms of documents, I don't recall
15 asking for a specific document. We did look into
16 documents in various areas, but specific documents, I
17 don't recall.

18 BY MR. KO:

19 Q. So outside of the articles that you spoke
20 with people at CRA about, with respect to the
21 documents produced in this litigation, do you recall
22 ever asking for or requesting from counsel or CRA
23 certain documents that were produced in this
24 litigation?

1 A. I don't recall requesting specific
2 documents, no.

3 Q. With respect to the documents that appear
4 in the bottom of B-3, and I'm looking at the court
5 documents, did you review all of the documents that
6 appear in this section of your report?

7 A. I would -- would have reviewed at least
8 part of those, yes.

9 Q. Okay. And I want to ask you about the
10 third item that you list here, which is a decision in
11 the City of New Haven's case.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes.

15 Q. Do you recall reviewing that?

16 A. No, I don't.

17 Q. Okay. Do you have any recollection
18 sitting here today of why you've included that
19 particular order in your court documents list?

20 A. I do not. I don't have a specific
21 recollection of why that's on the list.

22 Q. What about with respect to the order on
23 the Brooke County Commissioner's case which is the
24 next one down dated December 28th, 2018, did you

1 review that document?

2 A. I can't recall. If it's cited in my
3 report, I definitely reviewed it, because I've
4 reviewed everything that was cited in my report, but
5 linking that up with a name is pretty tough.

6 Q. Is there -- do you recall any particular
7 reason why you reviewed or requested to review the
8 Brooke County Commissioner's -- or the order in the
9 Brooke County Commissioner's case?

10 A. I do not.

11 Q. With respect to any of these court
12 documents, do you recall why you've requested to look
13 at these particular court documents?

14 A. Well, in terms of the Complaints, I think
15 that's a pretty straightforward, you know, answer,
16 which is looking back at what the Complaint was can be
17 helpful for understanding what the issues you are
18 supposed to look at are from an economic standpoint,
19 so. And so the Complaints I think are pretty
20 straightforward.

21 Q. Other than the Complaints, so in
22 particular the commend -- Amended Complaints on behalf
23 of County of Cuyahoga and the City of Cleveland which
24 you have a listed here, and the first one, the Summit

1 County Complaint, do you have any recollection of why
2 you reviewed the other court documents that are --
3 appear here?

4 A. Well, then the other ones are sort of
5 responses, and I'm sure that that would have been
6 based on information that's contained in those
7 responses.

8 Q. Turning to Page B-4 of this exhibit, you
9 list certain depositions, correct?

10 A. That's correct.

11 Q. Did you review all of those depositions?

12 A. I -- any ones that are cited in my report,
13 I would have reviewed at least the sections that are
14 cited in the report. If they are not cited in my
15 report, I may have only discussed them with staff, but
16 anything that's cited, I would have reviewed.

17 Q. And when you are saying cited, you mean
18 the specific citations, is that correct?

19 A. Yes, anything that's specifically cited in
20 the report, I would have reviewed that.

21 Q. With respect to the depositions that you
22 list here that are not expert reports, and so I'm
23 excluding the -- or sorry -- not experts, so I'm
24 excluding the deposition of Cutler, Gruber and

1 McGuire, is there any particular reason why you've
2 selected those to review?

3 A. I don't have a specific recollection for
4 the individual ones, but I would assume they had
5 relevant information of a factual nature that would be
6 helpful for putting together the report.

7 Q. And do you recall reviewing those specific
8 deposition transcripts?

9 A. No, I don't have a specific recollection
10 of reviewing those.

11 Q. And with respect to the deposition of
12 David Cutler, did you read the entire thing?

13 A. No. I looked through it and read a fair
14 amount, but not the entire thing.

15 Q. How much is a fair amount?

16 A. I don't know.

17 Q. Half of it?

18 A. I probably didn't read -- and, you know,
19 it depends on what you mean by read. I skimmed
20 through it to see what he was talking about in various
21 states. Usually I can figure out what he is talking
22 about pretty quickly and things that were important I
23 stopped and read in detail. That's kind of the way I
24 would go through an expert deposition typically.

1 He is an economist, so understanding what
2 he is trying to say is a lot easier for me than it
3 might be for some other people.

4 Q. Do you recall reviewing and reading the
5 deposition of Jonathan Gruber in its entirety?

6 A. I don't believe I read it in his
7 entirety -- in its entirety. I definitely considered
8 parts of it.

9 Q. Did you follow the same process that you
10 did for Cutler's deposition that you did for -- for
11 Gruber's deposition -- let me ask it, a clear
12 question.

13 Did you follow the same process of
14 reviewing deposition -- the deposition of Jonathan
15 Gruber as you did for the deposition of David Cutler?

16 A. I would have gone faster through Gruber's
17 deposition. He had less to say.

18 Q. What about with respect to the depositions
19 of Thomas McGuire, did you review that transcript in
20 its entirety?

21 A. I did not, no.

22 Q. Did you read portions of it?

23 A. That, I think, I would be even more
24 selective in, because, again, he is not the primary

1 focus of my testimony.

2 Q. And did you select which depositions to
3 review or were they provided to you?

4 A. I would say when it came to the experts,
5 obviously I selected certainly the -- the three
6 experts. When it came to the others, I think they
7 were provided to me by staff based on the topical
8 interest that we had, the information we were trying
9 to gather to put together an economic report.

10 Q. So is it fair to say for the non-expert
11 deposition transcripts, those transcripts were
12 provided to you by CRA or by counsel?

13 A. Yeah. They would all physically have been
14 provided to me by CRA because I wouldn't have gotten
15 them any other way, but those would be ones where they
16 would have followed from a general request to examine
17 the, you know, the record for information.

18 Q. With respect to the expert reports that
19 you list in B-4, did you review all of those?

20 A. I think I've been through this already. I
21 think I would say, you know, the Cutler report in the
22 most detail followed by the Gruber report, and then
23 the McGuire and McCann reports and Rosenthal reports
24 less -- less detailed.

1 Q. With respect to the Cutler and Gruber
2 reports, you're aware that they had various appendices
3 supporting their reports, correct?

4 A. Yes.

5 Q. Did you review any of the supporting
6 materials to their reports?

7 A. I did, and I mean Cutler in particular,
8 some of his tables are easier to understand in the
9 appendix than they are in the text itself. So I
10 certainly remember reviewing some of his appendix
11 tables. I -- I believe Gruber as well, but Cutler
12 specifically I recall going through his appendix
13 tables.

14 Q. Do you recall whether or not you reviewed
15 the shared data appendix?

16 MR. HALLER: Objection; vague.

17 BY THE WITNESS:

18 A. Well, we went through some of the -- I --
19 I don't know if that's the same as some of the backup
20 material we went through or that's in addition to the
21 backup material, but we definitely went through some
22 of the backup material to their reports. I don't
23 recall whether that was in the shared data appendix or
24 independently in the backup that they provided, but

1 that was part of doing the analysis we did was to go
2 through their backup.

3 BY MR. KO:

4 Q. We have gone over your knowledge of Cutler
5 and Gruber.

6 Do you know any of the other experts that
7 you identify here as reviewing their expert reports?

8 A. I didn't understand that.

9 Q. Sure.

10 A. Do you mean do I know these people
11 personally?

12 Q. Do you know Thomas McGuire?

13 A. No.

14 Q. Do you know Craig McCann?

15 A. No.

16 Q. Do you know Meredith Rosenthal?

17 A. No.

18 Q. Do you know -- are you aware of the
19 Plaintiffs' experts in this case?

20 MR. HALLER: Objection; vague.

21 BY THE WITNESS:

22 A. Beyond these, I know there is a lot of
23 them. I don't know who they are.

24 BY MR. KO:

1 Q. Okay.

2 Turning to the last section of your
3 Appendix B, you set forth three data sources.

4 Do you see that, on B-5?

5 A. Yes.

6 Q. You list ARCOS data, IQVIA data and NVSS
7 data.

8 Are those the datasets that you relied
9 upon in form the opinions in your report?

10 A. There are other datasets actually listed
11 in prior sections, but those are public data sources,
12 so there is -- I -- I wouldn't say those are all of
13 the data. Those are -- those are propriety -- those
14 are data sources specific to this case. So, for
15 example, we do a lot with the IPUMS-CPS and that's a
16 publicly available dataset. So if we are talking
17 data, we should include some of the pieces from the
18 prior section, but --

19 Q. Fair.

20 A. -- those are three datasets that I had
21 access to through this case that -- I think that's why
22 they are in this separate section from the public
23 sources.

24 Q. With respect to the ARCOS data, do you

1 recall whether or not you reviewed what's commonly
2 referred to as publicly available ARCOS data or
3 private ARCOS data and/or both?

4 A. I don't recall whether it was the public
5 or private version. It is the version that people
6 were using in this case, and so I wasn't sure -- I'm
7 not sure whether that's public or private.

8 Q. How about with respect to the IQVIA data.

9 Do you recall whether or not you've
10 utilized data that's separate from what the data
11 was -- or how the data was utilized by Plaintiffs'
12 experts?

13 A. I don't know. I believe some of that data
14 was data that -- I'm not sure that came from
15 Plaintiffs per se, so, I -- I don't know what
16 Plaintiffs used that data for, but -- so I don't know
17 if whether they used it the same way I did or had
18 access to the same data.

19 Q. And what is your understanding of what the
20 IQVIA data consists of?

21 A. My -- my understanding, I -- I believe by
22 my recollection is that that's prescription data, so.
23 We used it, I think, for the prescription part of my
24 report.

1 Q. And with respect to the NVSS data, do you
2 recall reviewing that?

3 A. Yes. We did the -- the vital statistics
4 data. We had two sources of data we used there, some
5 of which we got from the Plaintiffs who I believe had
6 access to some proprietary vital statistics data. We
7 also had the more publicly available vital statistics
8 data that we were able to access, so.

9 Q. And -- and is that access available
10 through the CDC Wonder database, is that what you are
11 describing?

12 A. We were able to access vital statistics
13 through CDC Wonder.

14 Q. Okay. With respect to -- well, first of
15 all, do you have an understanding of what types of
16 information was available in the data that was
17 provided to you by the Plaintiffs?

18 A. Yeah. The Plaintiffs -- my understanding
19 is that the Plaintiffs had the ability -- they
20 actually had individual record level data that they
21 could query directly.

22 The CDC Wonder data allows you to access
23 data but you have to go through an interface that
24 would limit the kinds of queries that you could run,

1 so it was sort of behind a curtain in some sense that
2 you had to use. And so that was a slight difference
3 in what could be done with those two datasets.

4 So for some of the purposes where you
5 wanted some fine level detail, we had to rely on the
6 NVSS data that the Plaintiffs had because it allowed
7 access to information that you couldn't get through
8 CDC Wonder.

9 Q. And are you aware of any data use
10 agreement regarding access to this NVSS data?

11 A. I do not know the specifics of the
12 agreement that the Plaintiffs had. I -- I know we
13 didn't have access to the same data they did directly,
14 at least originally, and, therefore, we were using
15 data that we got through their analysis of those data.

16 Q. And ultimately did you or someone at CRA
17 review the same data that Plaintiffs had access to
18 regarding the NVSS mortality data?

19 A. I don't know if we had access to -- if we
20 eventually got access to everything. I don't know
21 whether that happened eventually. I know originally
22 we didn't. I don't know whether -- and I know we got
23 more access to more stuff, but I don't know whether we
24 actually got access to everything. I couldn't tell

1 you.

2 Q. In your report you've done certain
3 empirical analysis analyzing NVSS mortality data,
4 correct?

5 A. Yes. Most of what we did in the report
6 was done through the CDC Wonder interface. There are
7 some other things on which we are relying on NVSS
8 data, but we actually were relying on summaries that
9 the Plaintiffs provided. So that's the ones that I
10 recall. So, for example, the Wood County analyses
11 that we do in the report, we couldn't have done with
12 CDC Wonder. We got the data directly from the
13 summaries that the Plaintiffs' experts had done.

14 Q. So the analysis that you performed in your
15 report regarding mortality data consists both of the
16 CDC Wonder database and the dataset that Plaintiffs
17 had access to, is that fair to say?

18 A. I don't want to -- necessarily want to
19 say, because the one I recall where the Plaintiffs'
20 data played a role was the Wood County one, and that's
21 one where it was more that that their summary had that
22 information already, so we were able to use the data
23 they provided to us at a summarized level for Wood
24 County to make that figure.

1 Q. Did you ever see a data use agreement
2 regarding access to this NVSS data?

3 A. Personally, no, but I didn't personally
4 access those data files, so I would not have access --
5 I only accessed things that were provided to me by the
6 Plaintiffs' side in this case, so.

7 Q. And individuals at CRA did access those
8 materials, correct?

9 A. I do -- I -- I don't know for sure whether
10 they -- the -- the level at which they accessed those
11 materials, whether they actually accessed the
12 underlying materials or materials that were -- they
13 had received from Plaintiffs. I don't know the
14 details on that.

15 Q. Do you have any understanding of whether
16 or not any individuals at CRA, including the ones that
17 you worked with, signed any data use agreements?

18 A. I -- if it was required, I'm sure they did
19 it.

20 Q. A moment ago you were discussing certain
21 data -- publicly-available datasets and -- and you
22 identified IPUMS-CPS as one particular database.

23 What -- what does that stand for?

24 A. IPUMS, I don't remember what it cites for.

1 It's actually a -- it's a -- it's a harmonized version
2 of the current population survey. I actually know
3 those -- I know the source of those data pretty well.
4 They were put together, I -- if you recall I talked
5 earlier about this fellow Finis Welch, his -- his --
6 one of his outfits, Unicon Research -- Research, was
7 the first people to put together the IPUMS-CPS. I
8 actually remember when they were putting that together
9 because Finis and I had done a lot of the work before
10 that was put together on our own harmonizing the CPS
11 and -- and it kind of grew out of the project that we
12 did personally, so. It is now a great dataset that a
13 lot of people use. So it is really good that that got
14 out there.

15 Q. And all of that data that appears in the
16 IPUMS-CPS dataset that you've cited to in your report
17 is all publicly available, correct?

18 A. It is available through the IPUMS-CPS and
19 it -- it is a lot easier to use because they took the
20 time to put it together in a compatible format. Back
21 when we used to first used it, you had to do all of
22 that hard work yourself. So it is really good that
23 they did that.

24 Q. With respect to the first dataset that you

1 list -- or the first reference you make in your public
2 sources list at the bottom of B-4, you -- you make a
3 reference to -- to the FRED dataset, right?

4 Do you see that?

5 A. Right. FRED is a -- it's a Federal
6 Reserve database put together by the St. Louis Fed.
7 It is actually a very useful database. It has lots of
8 macroeconomic series. It has got a pretty useful
9 interface. You can go download a wide range of data
10 that they've assembled, so.

11 Q. And I know you've cited to and utilized
12 the FRED database in various exhibits to your report.

13 In all of those instances are those
14 datasets that you can -- that one can publicly obtain?

15 A. That's my understanding. I don't think we
16 did anything that couldn't be done through the FRED
17 interfa- -- interface.

18 Q. And you have several citations in the
19 public sources to the -- the BLS or to certain
20 datasets maintained by BLS.

21 A. Yes.

22 Q. For the record, what -- what does BLS
23 stand for?

24 A. Bureau of Labor Statistics. They put

1 together a lot of datasets, including -- including the
2 current population survey, but also the American
3 Community Survey, these other survey datasets, many of
4 which are now much more readily available than they
5 used to be because they have an online interface you
6 can use to actually access the data pretty
7 efficiently. So, again, that's something that's
8 really nice.

9 Q. And I know that, again, you have
10 referenced and utilized the BLS datasets at various
11 times in your report including in many exhibits.
12 That's all information that's publicly available
13 and -- and for purposes of your report there wasn't
14 any non-publicly available -- or non-public data that
15 you accessed for those exhibits, correct?

16 A. No. Those would have all been based on
17 the public versions of those data.

18 MR. HALLER: Mr. Ko, how are we doing heading
19 towards another break?

20 MR. KO: I was just about to say, why don't we
21 take a quick break.

22 THE WITNESS: Take a quick break.

23 THE VIDEOGRAPHER: We are off the record at

24 3:14 p.m.

1 (WHEREUPON, a recess was had
2 from 3:14 to 3:32 p.m.)

3 THE VIDEOGRAPHER: We are back on the record at
4 3:32 p.m.

5 BY MR. KO:

6 Q. Dr. Murphy, I want to turn your attention,
7 which I see that you have it up -- open already, but
8 to Paragraph 17 on Page 12 of your report.

9 Are you there?

10 A. Yes, I am.

11 Q. And this section of your report reflects
12 the summary of the conclusions that you are reaching
13 for purposes of your expert report, correct?

14 A. Yes, it is. That's how it's titled and
15 that's what it is intended to do.

16 Q. So this is the summary of the opinions
17 that you intend to offer in this case, correct?

18 A. It is a summary of the opinions I intend
19 to offer, obviously reflecting the work I had done up
20 through the time of my report.

21 Q. And as of today are there any opinions
22 that are not contained in this summary of conclusions
23 section of your report?

24 A. There are no opinions that I currently

1 plan to put forward. Obviously others could arise
2 subsequently, but as of now this still summarizes my
3 opinions.

4 Q. And the basis for all of your opinions as
5 of this date are all set forth in your report as well,
6 correct?

7 A. I would say I've summarized the basis for
8 my opinions throughout the report. It doesn't mean
9 that includes everything I could possibly talk about,
10 but I've tried to include the summary of -- of the
11 bases for my opinions.

12 Q. Is there anything that you are aware of at
13 this point to support any of your opinions that are
14 not contained in this report?

15 A. Not specifically, no. I have a lot of
16 general knowledge as an economist and if asked some of
17 that may make what I'm saying here clearer, but I'm
18 not trying to -- there is nothing I intend to put
19 forward that is not contained in my report.

20 Q. Speaking of your general knowledge as an
21 economist, I believe you have made it publicly known
22 that you would fairly characterize yourself as more
23 focused on the concept of microeconomics rather than
24 macroeconomics.

1 Is that a fair characterization of
2 statements you have made in the past?

3 A. Yes, I consider myself a micro economist,
4 although I should make clear that microeconomics is a
5 very useful tool for thinking about macroeconomic
6 issues, but I don't claim to understand the voodoo of
7 macroeconomics.

8 Q. I'll leave that one alone.

9 I want to turn your attention to
10 Paragraph 18 of your report.

11 A. Yes.

12 Q. Paragraph 18, which has several subparts,
13 reflect the core opinions that you are reaching in
14 this case, correct?

15 A. Yes. That's a brief summary of opinions
16 that are described throughout the remainder of the
17 report, but I tried to put them in one place to make
18 them accessible.

19 Q. And this -- and the core opinions you --
20 you now -- you list under Paragraph 18, and I believe
21 I've counted them, so I'll represent to you that there
22 are 17 core opinions that are reflected in subsections
23 A through Q of your report.

24 So the question is: Are -- are all of

1 those -- are all of the core opinions that you are
2 giving in this case reflected in 16 -- 18A through Q?

3 MR. HALLER: Objection; vague as to "core."

4 BY THE WITNESS:

5 A. My goal was to have in one place a summary
6 of the areas on which I was opining and what those
7 opinions were. I -- I think everything that's in the
8 report is related to something that's talked about in
9 A through Q, so. It was intended to be a summary of
10 those things. It is not a substitute for reading the
11 whole report, obviously, but it's intended to provide
12 a summary of the opinions.

13 BY MR. KO:

14 Q. And I just want to make sure the record is
15 clear and to address your counsel's objection.

16 The core opinions that you are providing,
17 those are your words, not mine, right, in Paragraph 18
18 you -- you indicate that you are setting forth core
19 opinions, is that correct?

20 A. Yes, I -- I -- but I'm trying to explain
21 to you what I mean by core opinions. It's -- it's --
22 it's a -- I think of core as kind of a brief
23 description of what those opinions are. They are
24 obviously fleshed out in greater detail throughout the

1 report.

2 Q. With respect to your -- as we discussed
3 earlier today, the primary analysis that you are
4 providing in this report is in response to David
5 Cutler's report, correct?

6 A. I would say of the responsive, in terms of
7 responding to experts, I would say the majority of
8 that is in response to David Cutler's report. There
9 is also a fair amount of independent analysis that I
10 put forward that's not directly responding to work
11 that Professor Cutler did but certainly relevant to
12 that work.

13 Q. And as I'm sure you are aware, in
14 Professor Cutler's report, he provides an estimate of
15 the share of opioid-related harms attributable to
16 shipments, correct?

17 A. He does. That's one of the figures he
18 purports -- he claims that he can as -- that he puts
19 forward, yes.

20 Q. And -- and you have a critique of that
21 analysis, correct?

22 A. I have, yeah, I would say several
23 critiques of that analysis, but ultimately I have a
24 critique of that analysis throughout my report.

1 Q. Are you providing your own estimate of the
2 share of opioid-related harms attributable to --
3 attributable to shipments?

4 MR. HALLER: Objection; vague.

5 BY THE WITNESS:

6 A. I have not been asked to do that, so I did
7 not do that as part of my report.

8 Unfortunately, Professor Cutler doesn't
9 explain exactly from an economic point of view what
10 that means, but -- so I have not attempted to do that,
11 but -- for either of those -- or for both of those
12 reasons.

13 BY MR. KO:

14 Q. And as of today, do you have any intention
15 of providing your own estimate of the share of
16 opioid-related harms attributable to shipments?

17 MR. HALLER: Objection; no foundation, vague.

18 BY THE WITNESS:

19 A. I do not have a plan to provide such an
20 estimate. My plan and my opinions as stated in my
21 report are a critique of Professor Cutler's
22 calculations and why those calculations are not
23 reliable is a matter of economics.

24 BY MR. KO:

1 Q. And you're also aware that among the other
2 analyses that Professor Cutler performs, he also
3 provides an estimate of the share of harms
4 attributable -- attributable to opioids, correct?

5 MR. HALLER: Objection; no foundation.

6 BY THE WITNESS:

7 A. He does some of that. I don't -- I --
8 I -- he does in various places provide numbers along
9 those lines. I -- I'd have to go back and make sure
10 he does that throughout his report, but he does --
11 that's one of the things he definitely talks about
12 doing.

13 BY MR. KO:

14 Q. Just bear with me one second.

15 And where he does talk about this
16 analysis, again, you -- you offer a critique of his
17 analysis and his methodology used to calculate the
18 share of harms attributable to opioids, correct?

19 A. Yes, I do.

20 Q. Are you providing your own conclusion or
21 assessment as to what share of the harms are
22 attributable to opioids in this case?

23 MR. HALLER: Objection; no foundation, vague.

24 BY THE WITNESS:

1 A. I have not performed an independent
2 estimate of the share of harms due to opioids as part
3 of my report. That was not part of my assignment and
4 not something that I attempted to do.

5 BY MR. KO:

6 Q. In your report, are you offering any
7 opinion or conclusion as to the historical or future
8 costs incurred by the bellwethers that are or are not
9 the responsibility of the Defendants in this case?

10 A. That sounds like from your question a
11 legal question. And to the extent it's a legal
12 question, I'm not offering any legal opinions in my
13 case -- in -- in this case.

14 Q. And I wasn't intending it -- for it to be
15 a legal question. I guess I can try and ask it more
16 simply.

17 Does any aspect of your report identify
18 costs incurred by the bellwethers as a result of the
19 opioid crisis or as a result of Defendants' alleged
20 misconduct in this case?

21 A. I would say I discussed those issues. I
22 don't think I identify specific costs associated with
23 anything. So I was not asked to identify specific
24 costs or measure those specific costs. I was asked to

1 provide an economic analysis of the marketplace and
2 what happened, as well as critique Professor Cutler
3 and the other experts' analysis, but I wasn't asked to
4 provide an independent assessment of costs.

5 Q. You're aware that Professor Cutler in his
6 report analyzes to a great degree the level of
7 shipments on, among other things, harms in the
8 bellwether communities, correct?

9 MR. HALLER: Objection; vague.

10 BY THE WITNESS:

11 A. Your question, I think, needs to be
12 rephrased, because, yeah, I didn't understand it.

13 BY MR. KO:

14 Q. Fair enough.

15 Do any of the opinions that you are
16 offering in this case identify the specific percentage
17 of shipments that Defendants are or are not
18 responsible for as being unlawful in the bellwether
19 communities?

20 MR. HALLER: Objection; vague.

21 BY THE WITNESS:

22 A. That sounds 100 percent like a legal
23 question because you talk about unlawful. I -- I
24 can't give you an opinion as to what's unlawful. I'm

1 not an attorney, so. I'm an economist.

2 BY MR. KO:

3 Q. Have you con -- have you made any
4 conclusions regarding the percentage of shipments that
5 the Defendants are responsible for in this case?

6 MR. HALLER: Objection; vague.

7 BY THE WITNESS:

8 A. When -- when you say responsible for, that
9 they actually shipped, that those are the shipments
10 that they made?

11 BY MR. KO:

12 Q. Let me ask -- let me try again.

13 Have you made any conclusions regarding
14 the percentage of shipments that the Defendants are or
15 are not responsible for as being unlawful in the
16 bellwether communities in this case?

17 A. Again, I can't give you a legal opinion.
18 That, I mean, what's unlawful is a -- fundamentally a
19 legal question, and I can't give you an assessment of
20 what's unlawful.

21 Q. Have you made any conclusions regarding
22 the percentage of shipments that the Defendants are or
23 are not responsible for preventing in the bellwether
24 communities in this case?

1 MR. HALLER: Same objection.

2 BY THE WITNESS:

3 A. Responsible for -- for preventing under
4 what standard? Is that, again, a legal standard that
5 re -- that they are required to do something by law
6 or -- what's the standard that you think -- asking
7 whether I apply?

8 BY MR. KO:

9 Q. Fair enough.

10 Are you familiar with the Controlled
11 Substances Act?

12 A. Again, that's a legal -- that's a --
13 that's a con -- that's a legal doctrine. I -- I am
14 not well positioned to assess what that requires
15 people to do. And my understanding, there is debate
16 among the attorneys as to what that requires people to
17 do. So I don't want to venture into that fray.

18 Q. And I'm not -- I appreciate the response
19 that you gave me, but I simply asked you whether or
20 not you are familiar with the Controlled Substances
21 Act?

22 A. I'm familiar with its existence. I can't
23 tell you I'm an expert on the Controlled Substances
24 Act.

1 Q. Are you aware of whether or not -- or are
2 you aware of which entities are responsible for being
3 registrants under the CSA or the Controlled Substances
4 Act?

5 A. I'm not familiar with all of the details.
6 My understanding is that industry participants are
7 required to do certain things, whether that's
8 registration, I don't know what it's called, but they
9 are certainly governed by aspects of the Controlled
10 Substances Act is my understanding as an economist.
11 What those requirements are is, again, a legal issue
12 and I can't really speak to that.

13 Q. Now, a moment ago we were talking about
14 whether or not you've made any calculations of costs
15 the bellwether governments have incurred. And I
16 believe you said you have not directly done any of
17 that type of analysis, correct?

18 A. Well, I've -- I've looked at some of the
19 costs that Plaintiffs claim the bellwether comp --
20 counties have occurred -- incurred. I haven't done my
21 own independent assessment of what that number is, but
22 I've -- you know, that's part of my analysis is
23 looking at costs that they've claimed they incurred.

24 Q. And as you sit here today, do you have any

1 intention or plans to offer an independent assessment
2 of what costs the bellwether governments have incurred
3 as a result of the opioid crisis or as a result of
4 Defendants' alleged misconduct?

5 A. I would say that the places where I would
6 comment on that are whether Professor Cutler's
7 analysis and the analysis of other Plaintiff experts
8 that relate to that would provide reasonable economic
9 estimates of those quantities. I do not have plans at
10 this point to offer my own assessments.

11 Q. At trial?

12 A. Other -- at trial other than to comment on
13 their assessments and whether those -- their
14 assessments are reasonable as a matter of economics.

15 Q. Speaking of the trial, do you have plans
16 to be at the trial this fall if called to do so?

17 A. If called to testify, I would likely -- I
18 would expect to testify. I have not made any specific
19 plans to be there at this point.

20 Q. Are you aware that this case is currently
21 scheduled for trial in October of this year?

22 A. I had not paid particular attention to
23 that. Those dates usually change, which is why I
24 don't usually write them down on my calendar.

1 Q. Have you been told to keep those dates
2 open or any dates open for trial?

3 MR. HALLER: Objection.

4 If you did, that was a communication with
5 counsel, and I'll instruct you not to answer that
6 question.

7 BY THE WITNESS:

8 A. I think I've been told that testimony is
9 expected. I mean, I try to -- you know, I -- I have
10 to teach. So I always work my testimony around my
11 teaching schedule. So I -- to the extent I can work
12 it in around my teaching, I'll be there to testify,
13 but teaching is my No. 1 priority, so.

14 BY MR. KO:

15 Q. By the way, with respect to the courses
16 that you teach, I recall that you said that you are
17 teaching two classes this semester or currently
18 teaching two classes, correct?

19 A. Yes.

20 Q. And what two classes are those?

21 A. I'm teaching a course called "Big
22 Problems" that looks at public policy issues. It's a
23 course offered for public -- for business school
24 students as well as law students. So it's jointly

1 taught by myself and Robert Topel from the business
2 school and Anup Malani and -- and -- and David
3 Weisbach from the law school. So we co-jointly teach
4 that course. And then I jointly teach a sports
5 economics course with John Huizinga that's a business
6 school class.

7 Q. And what's the general nature of the
8 sports economics class?

9 A. Kind of quite a few things. Mostly about
10 sports analytics. So it's mostly about player
11 evaluations, strategic decision-making, things like
12 that in -- in -- in professional sports.

13 Q. And these two courses that you teach, are
14 those the two courses that -- or how long have you
15 taught these two courses?

16 A. This is, I think, the third year we've
17 taught the Big Problems class. It actually picked up
18 on a class that I taught for a long time with Gary
19 Becker before he passed away and Ted Snyder who was
20 for a while the Dean at Chicago. We taught a very
21 similar public policy class for about 13 years and
22 then there was a break of a few years where I wasn't
23 teaching and this -- we started teaching this class
24 again. So that class in one form or another has been

1 around for, you know, 15 plus years.

2 Q. Have you ever taught a class at Booth or
3 anywhere else to the extent that you were a visiting
4 professor that deals directly with opioid use or
5 misuse or abuse?

6 A. Drug abuse has been part of and -- and
7 markets for illegal goods and addictive behavior have
8 been part of the classes that I've taught for a long
9 time, but I've not taught a specific course on
10 opioids.

11 Q. With respect to the Big Problems class
12 that you teach, would you -- what types of big
13 problems are you generally discussing in these
14 classes?

15 A. Generally environmental issues tend to
16 play a pretty big role. So water, climate change,
17 inequality and -- and trade and health, health
18 economics, you know, healthcare expenditures and --
19 and -- and health insurance. We've also done ant --
20 those topics change. We've done antitrust, we've done
21 tort liability. Those would be the main areas we
22 typically would do.

23 Q. Have you ever discussed or analyzed or
24 studied the opioid crisis in connection with this

1 class?

2 A. I have not. I think it's come up in some
3 discussions that we've had. The health issues, the
4 sort of Case and Deaton things was part of what we've
5 talked about in that class, sort of the deteriorating
6 prospects for less educated men and women in the
7 United States has been a part of many of the classes I
8 have taught over the last 20 years.

9 Q. And to be clear, you are talking about the
10 elements that are discussed in the Case and Deaton
11 article and not the article itself, correct?

12 A. Yeah, I mean, the Case and Deaton articles
13 have been a topic of more recent years, but the ideas
14 there of declining labor market prospects and how they
15 relate to other aspects of people's lives, whether
16 it's family, living arrangements, health, that's been
17 part of these courses preceding Case and Deaton's work
18 by quite a bit. That's been something we've been
19 talking about for, like I say, 20 years roughly.

20 Q. Going back to our earlier discussion about
21 trial, if -- if the trial is scheduled for this fall,
22 is there anything that you can think of that will
23 prevent you from testifying as an expert in trial --
24 at trial this fall?

1 A. Only if I had to testify right when I had
2 to be teaching. As long as I can work it around my
3 teaching, I'll be there to testify, and I've been able
4 to do that in the past. I anticipate I'll be able to
5 do that in this case.

6 Q. And with respect to the additional work
7 that you may do in this case, at this point do you
8 have any understanding as to what additional work you
9 may be asked to do before -- between now and trial?

10 A. I don't have a specific knowledge of what
11 would come up. I mean, obviously if the Plaintiffs
12 submit anything that would be relevant for economic
13 analysis, I would expect to respond to that. If the
14 case goes to trial, I imagine there would be work to
15 organize the opinions I have and the materials that
16 support them in a format that would be suitable for
17 presenting it -- presenting at trial. So that would
18 be kind of -- that part of the case would begin.

19 Q. At this point do you intend to do any
20 further research between now and trial in connection
21 with the expert report that you've provided in this
22 case?

23 A. I don't have any specific plans at this
24 point.

1 Q. And do you have any specific plans or
2 intention to do any further empirical work or analysis
3 related to your expert work between now and trial?

4 A. I don't have specific plans to do that.
5 I'm not ruling out that that would happen, but I don't
6 have any specific plans at this point.

7 MR. KO: Well, Dr. Murphy, that is actually --
8 those are all of the questions I have for you this
9 afternoon. So I really appreciate your time. And I
10 don't know if your counsel has any specific questions.

11 MR. HALLER: I doubt we do, but I should
12 probably just consult with people and make sure, so
13 why don't we go off the record for a few minutes and
14 then come back.

15 THE VIDEOGRAPHER: We are off the record at
16 3:54 p.m.

17 (WHEREUPON, a recess was had
18 from 3:54 to 4:01 p.m.)

19 THE VIDEOGRAPHER: We are back on the record at
20 4:01 p.m.

21 MR. HALLER: I have no questions. Does anybody
22 else have questions? I think the answer is no.

23 MR. MURPHY: No.

24 MS. CASTLES: No questions.

1 MR. HALLER: So we are concluded.

2 THE VIDEOGRAPHER: We are off the record at
3 4:01 p.m. This concludes the videotape deposition of
4 Kevin Murphy.

5 (Time Noted: 4:01 p.m.)

6 FURTHER DEPONENT SAITH NAUGHT.

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1 REPORTER'S CERTIFICATE

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3 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604,
4 a Certified Shorthand Reporter, do hereby certify:

5 That previous to the commencement of the
6 examination of the witness herein, the witness was
7 duly sworn to testify the whole truth concerning the
8 matters herein;

9 That the foregoing deposition transcript
10 was reported stenographically by me, was thereafter
11 reduced to typewriting under my personal direction and
12 constitutes a true record of the testimony given and
13 the proceedings had;

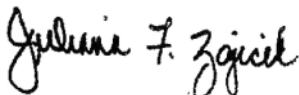
14 That the said deposition was taken before
15 me at the time and place specified;

16 That I am not a relative or employee or
17 attorney or counsel, nor a relative or employee of
18 such attorney or counsel for any of the parties
19 hereto, nor interested directly or indirectly in the
20 outcome of this action.

21 IN WITNESS WHEREOF, I do hereunto set my
22 hand on this 7th day of June, 2019.

23

24



JULIANA F. ZAJICEK, Certified Reporter

1 DEPOSITION ERRATA SHEET

2

3

4 Case Caption: In Re: National Prescription

5 Opiate Litigation

6

7 DECLARATION UNDER PENALTY OF PERJURY

8

9 I declare under penalty of perjury that I
10 have read the entire transcript of my Deposition taken
11 in the captioned matter or the same has been read to
12 me, and the same is true and accurate, save and except
13 for changes and/or corrections, if any, as indicated
14 by me on the DEPOSITION ERRATA SHEET hereof, with the
15 understanding that I offer these changes as if still
16 under oath.

17

18 KEVIN M. MURPHY, Ph.D.

19

20 SUBSCRIBED AND SWORN TO

21 before me this day

22 of , A.D. 20__.

23

24 Notary Public

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